Cr. A. Dwr. 44.

1944. **File No.**

K Legal **DEPARTMENT**

Examined SPP 20.VI.44. A **BRANCH**

Subject:— Criminal Appeals in the High Court, Bombay against the order of Acquittals. from [D]harwar [D]istt.

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Superintendent,
D Branch, Legal Department.

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File No. Cr. A. Dwr. /44.

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Judgment recorded by the High Court in Criminal Appeal No.135 of 1944.in the case of Imperator Vs. Shidramappa Basappa Ajampur and others.

Mr.B.G.Rao,Goverment Pleader,for the Goverment of Bombay.
Mr.R.A.Jahagirdar for the accused.

Coram:-Divatia and Lokur JJ.

11th September 1944.

Oral Judgment (per Divatia,J):-

This is an appeal by the Government of Bombay against the acquittal of the five opponents who were accused Nos.1,2,3,4,14 and 15 in the original case. In all, 15 persons were charged with the offence of causing damage to a Government building,viz., the Police out-post at Tumminkatti in the Dharwar District, by setting fire to it on the 30th of September 1942 and thereby causing loss of about Rs.520/- to the Government.They were all charged with the offence of having aided and abetted each other in the commission of the offence of setting fire under rule 35 (4) read with rule 35(1) and rule 121 of the Defence of India Rules.

The prosecution case in substance was that on the night of the 30th of September 1942 a large number of persons came to the Police out-post at Tumminkatti.Some of them belonged to that village itself while the others had come from the neighbouring village of Mensinhal.It is alleged that one Timmangouda was the leader of the gang and that they were Congress people who wanted to do an act of sabotage by setting fire to the out-post.This Timmangouda seems to have died on the 1st of March 1943. It is not clear whether he had been arrested before he died, but it is clear that he was not an accused person before the Magistrate.Although the offence took place on the 30th of September 1942, the statement of most of the witnesses were not taken by the Police up to the 26th of April 1943. A provisiona. charge-sheet against accused

Nos. 1 to 4 was sent on the 14th of November 1942 but the final charge-sheet was sent as late as the 15th of May 1943. The case was investigated by two Sub-Inspectors; one was Sub-Inspector Chandargi who investigated it from September 1942 to January 1943, and thereafter from February 1943 Sub-Inspector Madkarni took charge of the investigation. The prosecution examined a number of witnesses to prove that all the 15 persons, who were accused, had taken part in the offence of setting fire to the out-post. The learned Magistrate, who tried the case, was not satisfied on the evidence that the prosecution had satisfactorily proved the connection of the 15 accused with the offence. There is no doubt that on that night the out-post was set on fire. It appears that the persons who were present in the out-post at that time were a Police Havaldar named Ramchandra, a Police Constable named Anantsing and two Walikars named Karim and Tirka. Out of these, the Police Havaldar and the Walikar Tirka have been examined, and the Constable Anantsing and the other Walikar have not been examined, and no reason whatever was given by any of the Sub-Inspectors why they were not examined. The first information of this offence seems to have been sent by the Police Patil of the village to the Sub Inspector on the early morning of the 1st of October. In that first information report the Police Patil does not say that he had personally witnessed the fire. On the contrary he says that he was told by the Havaldar Ramchandra as to what had taken place. Moreover, no names of the accused have been mentioned in this report. The only thing mentioned is that Timmangouda and his people had come and had set fire to the out-post. The Police Patil was examined before the learned Magistrate and there he deposed that Tirka Walikar had come to fetch him that night at his house when he was sleeping and that he went to the scene of the offence where he recognised accused Nos. 1, 2, 14 and 15 and the deceased Timmangouda. Even with

regard to them he stated that they were standing among others,but he did not see them setting fire.Witness Tirkappa contradicts the Police Patil that he did not at all go to fetch the Police-Patil that night and in answers to the Court questions the Police Patil admits that in the first report he had written all the information which the Havaldar had given to him and that he did not write what he had personally witnessed.The learned Magistrate has come to the conclusion that the Police Patilcould not have gone to the scene of the offence,and we think that he is right in coming to that conclusion. If he had personally witnessed it one would have certainly expected that he would have so stated in his report.His deposition,therefore,is absolutely worthless.As regards the other witnesses who have been examined and on whom the Government Pleader relied before us,it appears that those witnesses have not stated a consistent ~~story~~ story. Some of the witnesses have stated that all the people who had come to set fire had either whitened or blackened their faces while other witnesses have stated that only some of the accused had done so and the others had not.Then some of the witnesses have said that only those persons,who had come to set fire, had entered the compound or the out-post while the others had remained out-side,while some other witnesses have said that all the persons who had come had entered the compound. Now, the most important witness Ramchandra and the other witness Tirkappa have stated that accused Nos.1,2,14 and 15 came to the out-post and warned them that people from Mensinhal were coming to set fire to the putpost and they should,therefore,remove their kit from the out-post.None of these two witnesses even suggest that these four persons took part in committing the offence or had instigated any other accused before the commission of the offence.All that witness Ramchandra says is that these persons were standing in the compound.He admits that he

knew all the opponents except accused No.3 before.In fact witness Tikappa says that he could not recognise any one except Timmangouda.As regards accused No.1 witnesses Exs. 36, 43, 44, 45 and 46 depose that he was simply standing in the compound doing nothing,while other witnesses Exs.41,42,47 and 49 say that he was asking and advising people to set fire. Then 3 or 4 persons have been examined for the purpose of proving that accused No.1 had a grocery shop in this village and that on the same evening Timmangouda had come to his shop and had asked him to sell kerosene oil to them for setting fire to the out-post.Three witnesses no doubt depose that in the evening they saw accused No.1 talking with Timmangouda and others. One of them says that Timmangouda was requesting him to supply kerosene oil to them while other witnesses say that they did not even hear what the talk was about.But in any case there is no evidence to show that kerosene oil was actually supplied by accused No.1 to Timmangouda or any other person. In fact, it is admitted in the course of the evidence that accused No.1 did not hold any licence for selling kerosene oil.As regards accused No.2, one witness Ex.3, says that he was bringing soppi from the neighbouring stack to set fire to the out-post,while another witness,Ex.36, says that he was standing there doing nothing and a third witness,Ex.49, says that he was standing there advising others to set fire to the out-post.As regards accused No.3, there are several witnesses who have deposed that he was sprinkling kerosene oil on the building.They are Exs.3,36,39,44,45,47 and 49.One witness,Ex.43, says that he was simply roaming about.As regards accused No.4 witnesses Exs.3 and 36 say that he was simply standing there doing nothing,while two other witnesses,Exs.44 and 49 say that he was lifting tiles from the roof,in order that the other accused might set fire to the out-post.About accused No.14, witness Ex.36 says that he was doing nothing,while another witness Ex.

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49 says that he was advising people to set fire to the building.As regards accused No.15, witness Ex.3 says that he was roaming about.Ex.36 says that he was standing doing nothing.Ex.49 says that he was advising people to set fire to the building.Now,all the witnesses who have been examined have made statements in their cross-examination which considerably snake what they have state in their examination-in-chief.Ex.3 was examined by the Police six months after the offence,and he says that before that he did not tell anybody what he alleges to ha seen.This witness is alleged to have heard the talk between accused No.1 and Timmangouda about the selling of kerosence oil,but he admits that he did not witness the giving of the kerosene oil.Witness Ex.36 admits that those who came to set fire had painted their faces,but it is clear on the evidence and on his own admission that th six opponents in this case had not painted their facts at all.Then he says that there were about 50 persons in the compound though about 25 persons had come to set fire. It is clear,therefore,on his testimony that it is not true that all the persons who were inside the compound had come to set fire,whereas Ex.3 and other witnesses have stated that all the persons who were in the compound had come to set fire to the building.The statement of witness Ex.38 was not taken till the 12th of November and he says that 20 or 25 persons were inside the compound to set the out-post on fire. This witness is mainly examined about the sale of kerosene oil.He admits that he did not actually hear the talk.Then witness Ex.39 admits that he did not see any other accused there except accused No.3, but even with regard to that accusedhe says that he did not recogni any one except Timmangouda as all of them had painted their faces.It is, therefore,difficult to see how this witness is positive in his statement that accused No.3 was sprinkling kerosene oil.Then witness Ex.41 says that

accused No.1 was telling people to set fire. His statement was,however,taken 4 or 5 months after the offence,although he says that he immediately gave the names of the accused to the Havaldar that very night.If that was so,it is difficult to see why the Havaldar did not mention the names of those accused to the Police Patil.Witness Ex.42 says that all persons who had come to set fire had painted their faces.If that is so,it is clear that the six opponents had not come to set fire because they had not painted their faces. Similarly witness Ex.45 admits that accused No.1 did not go away with the other accused but he came out of the out-post along with the Havaldar.If that is so, then it is very strange that the Havaldar did not immediately arrest accused No.1 if the latter had taken any part in the commission of the offence.The statements of the witnesses Exs.46 and 47 were not taken till about six months after the commission of the offence. Witness Ex.48, ~~against~~ admits that all the accused had painted their faces and therefore he could not know them,but he improves his statement by saying that he,however, recognised accused nos.1,2 and 15. He further says that he gave their names to the Police and he cannot assign any reason why their names do not appear in that statement itself.Lastly witness Mahammadsab, Ex.49, who involves all the six accused, admits that he has been convicted 4 or 5 times and that a criminal case was pending against him.

The learned Magistrate has held on this evidence that the prosecution has not succeeded in proving this offence against any of the 15 accused and we have no doubt that he was right in his conclusion.Not only have the witnesses made contradictory statements, but the evidence of most of the witnesses is unbelievable on the face of it.The two important witness,Ramchandra and Tirkappa,have admitted that accused Nos,1,2,14 and 15 had come to warn them of the Mensinhal people coming

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to set fire to the out-post.It is no doubt true that they were in the compound when the building was set on fire, but it is very strange that they came thus to warn the Havaldar if they were among the persons who had, according to the prosecution,entered into a previous conspiracy for setting fire to the out-post.No doubt a large number of witnesses have involved accused No.3 for sprinkling kerosene oil,but the story of some of the prosecution witnesses about the sale of kerosene oil by accused No.1 to Timangouda is entirely unbelievable and there is no satisfactory evidence to support it.Therefore, the alleged part which accused No.3 has taken in this offence is also not satisfactorily proved.We think, therefore, that the learned Magistrate below was right in acquitting the accused of the offences with which they were charged.

We, confirm the order of acquittal of the six opponents and dismiss this appe

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Judgment recorded by the High Court in Criminal Appeal No. 523 of 1943 by the Government of the Province of Bombay in the case of Imperator *versus* Mallappa Somappa Asuti No. 1 and others Nos. 2 to 27 and Nos. 29 to 51.

The Advocate General with the Assistant Government Pleader for the Appellant.

Counsel Mr. Bhulabhai Desai with Mr. S. R. Parulekar for accused Nos. 9 to 16.

Counsel Mr. Chundrigar with Mr. G. A. Desai for accused Nos. 1 to 8, 17 to 25, 27, 29 to 40, 42, 43, and 45 to 51.

R. B. B. L. Patil for accused Nos. 26, 41 and 44.

18th September 1944.

(Coram :—Sen, and Rajadhyaksha, JJ.)

Judgment (*per Sen, J.*) :—This is an appeal by the Government of the Province of Bombay against the acquittal by the Additional Sessions Judge of Dharwar, sitting with Assessors, of 50 accused who, along with another, accused No. 28 (who died during the course of the trial), were tried for offences punishable under sections 147, 148, 323, 394, 395, 354, 364, 454, 435, 436 and 302 read with sections 34, 114 and 149 of the Indian Penal Code. The Assessors were unanimously of opinion that none of the accused was guilty of any of the said offences. The offences are alleged to have taken place at Kadadi, which is a village 14 miles from Gadag and which contains 300 to 400 houses with a population of about 1000 people.

2. The evidence in this case is voluminous and the hearing took 65 days. The record of the case consists of 341 closely printed pages, the evidence for the prosecution occupying 186 pages, the statements of the accused 86 pages and the judgment 76 pages, the accused having chosen not to lead evidence on their behalf. The prosecution case in brief is that the accused, who consist of 8 persons belonging to three rich and influential families of Gojnurs and their servants and relations, and whose relations with the families of the police Goudars and Hiregoudars, and particularly with a woman named Shivagangawa, had become considerably strained, formed an unlawful assembly on the 21st March 1942, committed rioting by first throwing stones at persons collected in the back-yard of Dod-Bharamgouda, where a fire had broken out and had been extinguished, some of the said persons, including the Police Patil, having been hurt, and, secondly, by beating Ningangouda and Bashetti ; that they, or some of them, next outraged the modesty of Shivagangawa by making her naked and parading her in that condition in public ; that they broke into the house of one Basangouda, one of the Hiregoudars, and set fire to the cotton inside the said house and that after having abducted Shivagangawa and Basangouda from the houses of Hulgur Sakrappa and Basangouda respectively they murdered them by burning them alive in piles of burning fodder and other fuel. The material details of the prosecution case are as follows. Accused Nos. 9 to 16 belong to three families of Gojnurs headed by accused Nos. 10, 12 and 9. Accused Nos. 1 and 35 (brothers), Nos. 2, 7, and 34 (agnates), Nos. 38, 22 and 23 (brothers), Nos. 25, 26 and 27 (sons of three sisters), Nos. 36, 42 and 43 are servants of accused No. 10 ; accused Nos. 4 and 24 (brothers), Nos. 17, 31, 45, 46 and 39 are servants of accused No. 12. Accused Nos 3 and 44 (agnates), Nos. 6, 8, 47 (brothers), Nos. 18 and 19 (brothers), Nos. 40 and 41 (brothers), Nos. 48 and 49 (agnates), Nos. 20, 29, 30, 32, and 37 are servants of accused No. 10. Accused No. 32 is a servant of the Gojnurs. Accused No. 28 is a relative of the Gojnurs, and so are accused Nos. 32, 37 and 51. Accused No. 50 is married to accused No. 15's sister. Accused Nos. 10 and 11 are brothers. Accused No. 14 is the son of accused No. 10. Accused Nos. 12, 13 and 16 are brothers and accused Nos. 9 and 15 are sons of two brothers.

3. Sometime prior to the date of the offence, the relations between Gojnurs on the one hand and Shivgangawa and her son Bashetti on the other had become strained. On the 20th August 1941 accused No. 28 filed a complaint for assault and abuse against Shivagangawa and Bashetti. They were both convicted and fined, the judgment being given on the 8th December 1941. On the 24th August 1941 accused No. 39 filed another case of a similar nature against Shivagangawa and Bashetti and in that case also they were convicted and fined, the judgment being given on the 1st December 1941. Basangouda stood surety for Shivagangawa in both those cases and helped her in her defence. Some prosecution witnesses in this case were witnesses for the accused in those cases and some of the accused, viz., accused

Nos. 4, 10, 29, 39, 42 and 48, gave evidence in those cases on behalf of the prosecution. It was the prosecution case in the present case that those cases were falsely instituted because Isha, the son of accused No. 10's daughter, had committed an unnatural offence on Shivagangawa's daughter's son Ira and Shivagangawa had consequently slapped Isha, an act which had irritated the Gojnurs ; but there is little evidence on this point.

4. On the 20th February 1942 several persons made a written application to the Mamlatdar of Gadag complaining of the obstruction caused by the Gojnurs and their servants to the use of water in a tank by the public. This application was signed, among others, by Bashetti, son of Shivagangawa, the deceased Basangouda and the following who are prosecution witnesses in the present case, viz., Chanbasangouda, Ningangouda, Narayan Pujar, and also by a brother of Ramangouda and Dod-Bharamgouda who belonged to the police Goudar family. From January 1942 several stacks belonging to different inhabitants of the village were burnt by fires, some of the stacks belonging to the Gojnurs, some to their enemies and some belonging to persons not of either party. It is further the case for the prosecution that since the decision of the two cases referred to above against Shivagangawa and her son, Shivagangawa used to abuse the Gojnurs on every possible occasion.

5. The alleged offences took place on the 21st March 1942. On that day at about noon, the stack of Hulgur Sakrappa, which had been kept in Dod-Bharamgouda's back-yard, was burnt. Several persons of the village collected, including members of the Goudar families, and in about half an hour the fire was extinguished. The Police Patil Bharamgouda, Basangouda and Shivangouda were among those who went to put out the fire, after which Basangouda left the backyard. Thereafter there was an altercation between Ningangouda, the brother of the Polie Patil Bharamgouda, and accused No. 34 just outside the south-eastern gate of the backyard. Ningangouda said to accused No. 34, " These are the persons who first set fire to stacks and then come to extinguish the fire." Accused No. 34 asked whether that remark was meant for him, Ningangouda being addressed contemptously in the second person singular. Thereupon Ningangouda slapped accused No. 34 and accused No. 34 left the place saying that he would bring his master. Fifteen minutes or half an hour later, the 51 accused stood in accused No. 28's backyard. Words were exchanged between the two groups. Shivagangawa also came and began abusing the Gojnurs. Thereupon the Gojnurs and other persons assembled in the backyard of accused No. 28 began throwing stones at the persons collected in the bacnyard of Dod-Bharamgouda. Dod-Bharamgouda, Bharamgouda the Police Patil, Shivangouda, Basangouda and Ningangouda were hurt by the stones and Dod-Bharamgouda and the Police Patil fell down. The people in Dod-Bharamgouda's compound began to run, except for one or two who hid themselves behind stacks. Ningangouda and Bashetti went and stood on the *katta* or verandah of Kashappa Asuti. The accused, or several of them, came through Dod-Bharamgouda's compound and by the Muslim lane to the west of Kashappa's house. Ningangouda was dragged down from the *katta* by accused No. 12 and beaten with sticks by accused No. 12 and others. Bashetti ran pursued by some of the accused. He was caught before the house of accused No. 34 and beaten by accused Nos. 17, 46 and others with sticks. He ran near accused No. 28's house and was again beaten there. His sister Nilava and grand-mother Sangamma fell on him and they entreated the accused to leave him. At this stage the accused got information that Basangouda was concealed in Kashappa Asuti's house. Thereupon they left the place. Bashetti was taken to the house of Ramangouda, son of Dod-Bharamgouda. The accused went to Kashappa Asuti's house where Basangouda, Shivangouda and Ningangouda had taken shelter. The accused called out to Basangouda to come out and accused No. 14 told Kashappa to get the three persons inside to come out of the house. Kashappa pleaded his inability. It was suggested to him that he should in that case lodge a complaint of dacoity against those persons. Kashappa was proceeding with some of the accused to comply with this suggestion, when information reached the accused that Shivagangawa was concealed in the house of Hulgur Sakrappa. The accused who had been near Kashappa's house went, therefore, to that house. Shivagangawa was told to come out of the house. Some of the persons went to a smithy where accused No. 10 was and accused No. 10 said that if Shivagangawa did not come out the house would be burnt. On Shivagangawa's being informed of this she came out of the house saying, " If you are men, do whatever you like with me." Thereupon accused No. 17 removed her waistband and accused No. 48 removed her *sari*. Her bodice also was removed and she was made naked. She was then taken through the main streets towards the Ramlinga temple and seated there. It is alleged that while she was sitting there, a wooden stick was also inserted into her private parts. Accused No. 10 put a *chappal* into her mouth and also beat her with another *chappal*. He moved up and down the street saying that those who wanted to see Shivangangawa might come and see her. Accused No. 9 kicked her on the back, stood on her stomach and threw out the challenge, " Any one may come and rescue her." While Shivagangawa was being brought to the Ramlinga temple, accused Nos. 6 and 10 had separated themselves from the rest of the accused and gone to the stack of Nagappa, accused No. 44. They set fire to the said stack and came to the temple. Shivagangawa was next taken along the Kombannavar lane and then taken north to the backyard where accused No. 44's stack had been set on fire. Shivagangawa was lifted and thrown on to the burning stack. She rolled down the stack and as she lay on the ground fodder was brought from the adjoining school compound and later fuel was also brought from the field of accused No. 12 which was in the neighbourhood. The incident of Shivagangawa being burnt in this manner was seen by Channayya, who had been going from Garwad, a neighbouring village, to Balaganur station in order to catch a train for Gadag, Pampanna who lived in a house not far from the stack of accused No. 44, Chanbasangouda who sat on a *charpoy* in front of accused No. 9's house with the latter's uncle Ningappa Gojnur, and Irappa Doni, the son of Shivagangawa's sister

6. The accused next proceeded to Basangouda's house. Basangouda was sitting on his verandah, and Parvatewa, his deceased wife's sister, Amarappa, son of Parvatewa, and Nilkanthgouda were sitting by his side. Bharamgouda, Basangouda's son, was inside the house taking his meals. Ningangouda and Shivangouda were sitting on the *katta* of Ningangouda's house. They went inside the house and shut the front door. Parvatewa told Basangouda to go inside. Basangouda and Amarappa went in and chained the door from inside. Parvatewa and Nilkanthgouda concealed themselves in Nilkanthgouda's house.

The accused, after coming there, called on Basangouda to come out, and a long iron bar, article No. 4, was brought from the house of one of the Gojnurs and an assault was commenced on the front door. The front door could not be forced open, and 20 to 30 persons went to the back door and the back door was broken open. The first room entered by the accused, or some of them, was the kitchen. Basangouda went past the other door, which is called the middle door, and closed that door from the other side. There was some cotton inside the kitchen which was set fire to and the accused next broke open the middle door by using the iron rod, article No. 4, and pulling one of the doors towards them, so that both the chain as well as the hook to which the chain was attached broke. Bhimappa Sirur had come to Nilkanthgouda's house by this time, and he and Nilkanthgouda next went to accused No. 10's house and asked him to intervene. Accused No. 10 asked whether Nilkanthgouda would guarantee that Basangouda would take no proceedings with regard to the burning of Shivagangawa. Nilkanthgouda agreed to do so, and accused No. 10 was then brought to the house of Basangouda. He called out to Basangouda, saying that the matter would be compromised, and Parvatewa was asked by Basangouda to unchain the front door, the chain having been previously put there by the accused before they had gone to the back door. Basangouda came out, while Amarappa and Bharamgouda were still inside putting out the fire in the cotton. Basangouda protested against the acts of the accused whereupon he was attacked by several accused persons with sticks and he fell down bleeding in front of his verandah. Parvatewa entreated the accused to leave him, but accused No. 28 said that he should not be left there but should be burnt. Basangouda was next carried through the streets and thrown before Adiveppa Saraf's house. Ropes were tied round his thighs, he was next taken to the place where Shivagangawa had been burnt and he was thrown on to the burning stack. He also, like Shivagangawa, rolled down the stack and was then pushed towards the fire and fodder was brought from the school compound and put on him; the fodder immediately caught fire. The accused were there for about half an hour, and then most of them left, leaving some of them to attend to the fire. The attack on Basangouda's house was seen by Parvatewa, Nilkanthgouda, Bhimappa Sirur, Amarappa and Bharamgouda son of Basangouda, and Ningangouda saw a part of the incident through a chink in his door. The witnesses to the burning of Basangouda are Bharamgouda, his son, Dyama Kindri who had gone to graze his goat and calf towards a *nalla* not far from the burning stack and was returning therefrom, Pampanna and Chanbasangouda. The fire was seen at a later stage by Virupaxgouda, the Police Patil of Hadagali and Mahadevappa, a coolie from Hadgali. When Basangouda was taken towards the stack of accused No. 44, he was followed at a certain distance by Parvatewa, Nilkanthgouda and Bharamgouda. Nilkanthgouda, on being threatened, returned after he had gone a few paces. Parvatewa and Bharamgouda followed the accused who carried Basangouda's body to the house of Channappa Iti. There accused No. 22 struck Bharamgouda with a stick and he returned to his house. Bharamgouda again went as far as the Saraf's houses and from there, standing in the middle of the road, he saw his father's body being burnt. Parvatewa too went up to Adiveppa Saraf's house but being threatened she returned to Basangouda's house.

7. About half an hour after Basangouda had been thrown on to the burning stack, some of the accused thought that they should get hold of Bashetti. In the meanwhile Bashetti, Nilkanthgouda and Bashetti's cousin Irappa Doni had left Ramangouda's house and gone to Basangouda's house. There they found Parvatewa, Amarappa and Bharamgouda crying. Bashetti left by the back door of the house and went away to Garwad. He was followed there shortly afterwards by Irappa Doni. The accused went to Shivagangawa's house and asked whether Bashetti was inside and demanded that the door should be opened. Nilawa opened the door, and after looking for Bashetti who had already left, they partook of some sweets which were in the house and carried away some of the sweets, and thereafter they went to Mudkappa's shop. Accused No. 10 asked accused No. 14, his son, whether he had sent anyone to look for Bashetti and Vyankya, a servant of Bashetti. Accused No. 14 replied that he had sent 4 men in two carts and that they had not returned. Accused No. 10 sent some persons to watch the roads.

8. Narayan Pujar had seen the quarrel in Dod-Bharamgouda's backyard, had got hit by a stone and gone to his house. He stayed there for some time, and at 1 p.m. he thought of carrying the information to the Police at Gadag, 12 to 14 miles away. After walking about 3 miles he thought that it would be better for him to go to Hombal where a brother of Ramangouda named Dyamangouda, who had been adopted into another family, lived and he therefore went to Hombal, 7 miles from Kadadi, and arrived there at 7 or 7-30 p.m. He informed Dyamangouda of what he knew and told him to inform the Police at Gadag. Narayan went from there to a relation of his at Gudadar and returned to Kadadi 3 or 4 days later on being called by the Police Sub-Inspector. Dyamangouda arrived at Gadag at about 11-30 p.m. and informed the Sub-Inspector as follows :—

> "My village is Kadadi. I have gone in adoption to Hombal. Bharamgouda Police Goudar is my genetive father. This day while I was in my house in the evening at about 7 or 7-30 p.m. Narayanappa Pujar of Kadadi came to me and told me that Gojnur party people have fought and have beaten Bharamgouda and Basangouda and others at Kadadi and he being terrified ran away to Gudur and he asked me to inform this to the Police. Accordingly I have come and given *vardi*. I do not know definitely what really has happened at Kadadi. I got afraid and did not ask him any more and have come running. You should come to Kadadi early."

9. Bashetti went to Garwad first to a tea-shop and thence to one Nilawa's house. The Police Patil of that village, Sangangouda, went to see him but as Bashetti was unable to speak, Irappa told him all that had happened and also that the accused were searching for Bashetti. Sangangouda kept a village servant to watch them for the night. Next morning Bashetti and Irappa went to Hadagali. They were going to the house of the Police Patil of that village but Police constable Mahadevappa took them to Kadadi, where they arrived at about 8 a.m., and their statements were recorded by the Police Sub-Inspector on that morning.

10. The Police Sub-Inspector arrived at Kadadi at about 2 a.m. He felt a bad smell and Yamnappa Walikar told him that Shivagangawa and Basangouda had been burnt to death. He saw two heaps of

fire 2 or 3 feet from the main stack in the yard where the burnings are alleged to have taken place, the stack also being burnt. He ordered water to be poured and the fire to be put out, kept a watch at the place and went to the *chavdi*. Thereafter he went to Basangouda's house. At about 8 p.m. he recorded the statement of Bharamgouda, son of Basangouda, and made Panchnamas regarding the state of Basangouda's house, the site where Shivagangawa and Basangouda were alleged to have been burnt and the burnt stack of Hulgur Sakrappa in the backyard of Dod-Bharamgouda. He could not find any of the accused persons in the village. He examined 11 persons on that day, the 22nd March. Out of those persons Shivangouda and Dod-Bharamgouda are dead. He also got *Panchnamas* made regarding the injuries which were found on Nilkanthgouda, Ningangouda, Shivangouda, deceased, Bashetti and the Police Patil Bharamgouda. The earth in front of Basangouda's house was found stained with blood and he attached some of the blood stained earth for being sent to the Chemical Analyser. On the 27th he found an ornament, a Tali (article 22) in the house of accused No. 48. As it was identified by Nilawa as an ornament of Shivagangawa it was attached. Accused Nos. 1 to 3 were arrested on the 27th. He sent a list of the remaining 48 accused to 36 Police Stations as they could not still be traced. On the 22nd, 23rd, 26th and 28th most of the prosecution witnesses were examined. Accused Nos. 4 and 5 were arrested respectively at Gadag and Hirekop on the 31st March and 2nd April 1942. Accused Nos. 6 and 7 were arrested at Balagnur and Belhod respectively on the 4th and 6th April 1942. Accused No. 8 was arrested at Harlapur on the 6th April. On the 8th April the Police Sub-Inspector sent up a charge-sheet against the first 8 accused showing in the charge-sheet that the other accused were absconding. Thereafter the remaining accused were arrested or appeared on different dates, mostly at places outside Kadadi. On the 29th May accused Nos. 10, 20, 21, 26, 27, 29, 31 and 50 were still absconding and a proclamation was issued for their arrest. The last accused to be arrested were accused No. 50 who presented himself before the Sub-Divisional Magistrate on 1st July 1942 and accused No. 10 who appeared before the said Magistrate on the 3rd July 1942. About the 25th June orders had been passed by the District Magistrate attaching their property.

11. To prove the prosecution case 40 witnesses have been examined for the prosecution, 18 of them being alleged to be eye-witnesses for one or more of the incidents sought to be proved. They included (1) three members of the Police Goudar family, namely, Ningangouda, Bharamgouda, Police Patil and Bharmawa; (2) five members of the Hiregoudar family, namely, Bharamgouda son of Bhasangouda, Parvatewa, Amarappa, Nilkanthgouda and Bhimappa Sirur; (3) Bashetti, son of Shivgangawa, Nilawa, daughter of Shivagangawa, Irappa Doni, son of Shivagangawa's sister and Ira, son of Nilawa; (4) Yamnappa Hakki Valikar, a village servant of Kadadi, Mudkappa, the owner of a tea-shop, Narayan Pujar, Dyama Kindri, a coolie, Chanbasangouda, Kashappa Asuti, the elder brother of accused Nos. 1 and 35, and Pampanna, an ex-clerk of the Gojnurs; and (5) the following who are not residents of Kadadi; Channayya, a tailor of Gadag, Kalkangouda of Garwad, father-in-law of Channayya, Dyamangouda of Hombal, a brother of Ramangouda of the Police Goudar family who had been adopted into another family, Sangangouda, Police Patil of Garwad, Virupaxagouda, Police Patil of Hadgali, Mahadevappa, a coolie of Hadgali, Drs. Mandlik and Soman, Nilkanthappa, a *Panch*, the Police Sub-Inspector, Karajgi, who made the major part of the investigation and the Police Sub-Inspector, Havalad.

12. The important incidents mentioned in the prosecution story are: (1) stone-throwing from the backyard of accused No. 28, (2) The beating of Ningangouda, (3) the beating of Bashetti, (4) abduction of Shivagangawa, (5) outraging the modesty of Shivagangawa, (6) the burning alive of Shivagangawa, (7) the assault on Basangouda's house, (8) the beating of Basangouda, (9) the abduction of Basangouda, and (10) the burning alive of Basangouda.

13. One important feature noticed by the learned Judge was that several witnesses speak of all the accused or of the 51 accused being present at important stages, for instance, at the stone-throwing, the disgracing of Shivagangawa, the assault on Basangouda's house and the burning of Shivagangawa and Basangouda. Several of them mention specific accused or specific accused " and others " in connection with such incidents while they implicate the accused generally therein. The learned Judge thought that he had only two alternatives open to him: either to convict all the accused or to acquit them all, and he chose the latter course.

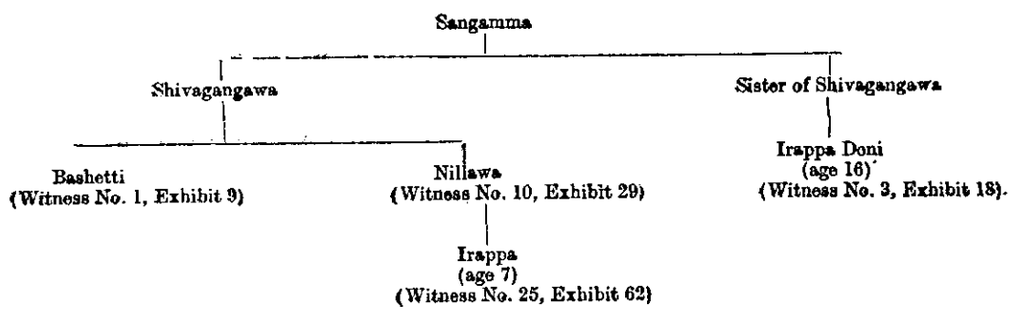
14. Another proposition of law enunciated by him, a proposition based on the observations of Young J. in *Man Singh* v. *Emperor* and *Asmatulla* v. *Emperor* A.I.R. 1933 All., 401 and 896, is that if a witness is shown to have given false evidence on any particular the whole of his evidence becomes unreliable. He found that each of the main witnesses had perjured himself with regard to some matter or other and he concluded that the whole prosecution evidence was therefore unreliable. He came to the conclusion that the prosecution case was not only not proved, but that it was a deliberately got up case; the only part of it which appeared to him to be true was that some sort of a fight had been indulged in by some persons of the two main parties in the village in the backyard of Dod-Bharamgouda, that some persons in consequence had received trifling injuries and that the fight had taken place between 4 and 5 p.m., and not about noon as alleged. He found distinct improvements made in the story as first related to the Police or as first sought to be established in Court, for instance: (1) the Gojnurs were brought into the case at later stage; (2) the allegation that wood fuel was brought to help the burning of Shivagangawa and Basangouda was an improvement; (3) the second trip of Bharamgouda son of Basangouda, when he says that he saw his father burnt, was an improvement; (4) it was also an improvement to say that Shivagangawa and Basangouda were burnt in two separate fires apart from the stack of accused No. 44 which was also burnt.

15. The learned Judge held it not proved that Basangouda and Shivagangawa met their deaths by being burnt. It was possible, according to him, that they were attacked and received injuries of which they died or that they were made to disappear or that they eloped together. It was also probable, according to him, that certain bones were brought from the cremation ground of the village and thrown into the fire in which they were alleged to have been burnt and that to give the fire an appearance of reality pieces of charcoal were put on the top of the burning heap or heaps noticed by the Sub-Inspector on his arrival.

He held that most of the alleged incidents were not only not proved but improbable; for instance: (1) the slapping of accused No. 34 by Ningangouda; (2) the collection of all the accused in the backyard of accused No. 28 within 15 minutes; (3) the beating of Ningangouda near Kashappa's house and the beating of Bashetti near the houses of accused Nos. 34 and 28; (4) Shivagangawa's having been in the backyard of Dod-Bharamgouda or in the house of Hulgur Sakrappa; her disgrace as alleged or her being burnt to death in the manner alleged; (5) the assault on Basangouda's house and his being burnt in the manner alleged; (6) the alleged second incident in Kashappa's house when Ningangouda, Basangouda and Shivangouda had shut themselves in it and particularly the presence of Basangouda there; (7) the alleged burning having been seen by Chanbasangouda, Irappa, Dyama Kindri, Bharmagouda son of Basangouda or Channaya from the places where they say they they sat or stood; (8) the presence of Pampanna, Nilawa and her son Ira in the village on the day in question; (9) the presence of Parvatewa and Amarappa in the village, the probability being that they were in their fields; (10) Bashetti's and Irappa's going to Garwad; and (11) the blood found in front of Basangouda's house on the morning of the 22nd March being Basangouda's blood.

16. It would be useful at this stage to refer to some genealogies.

I.



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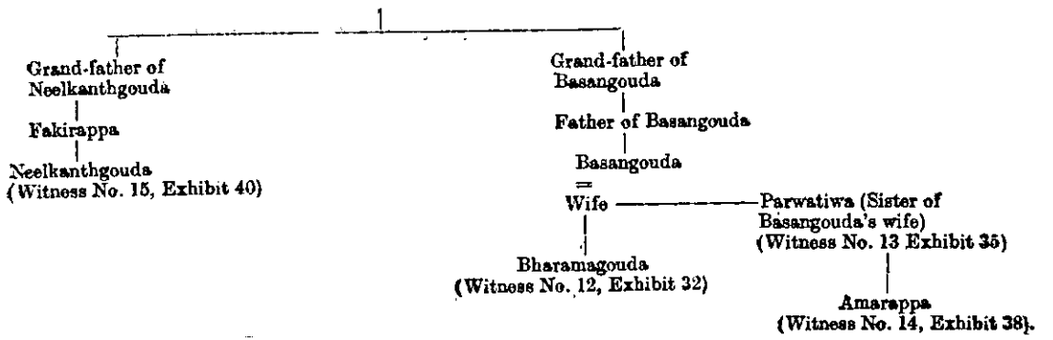

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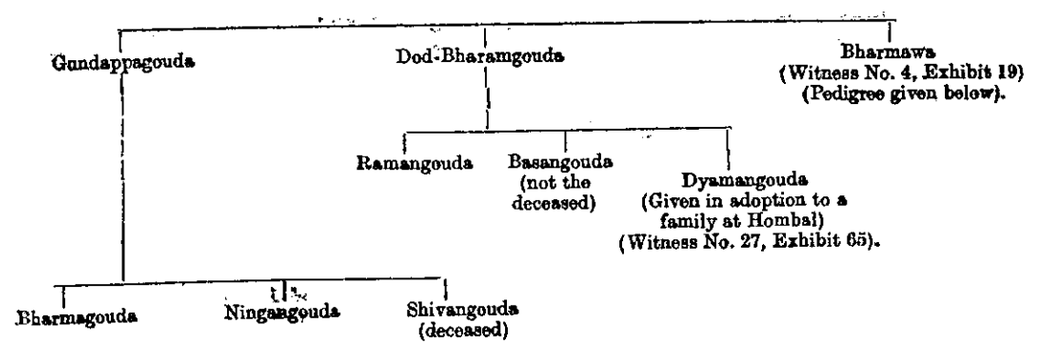

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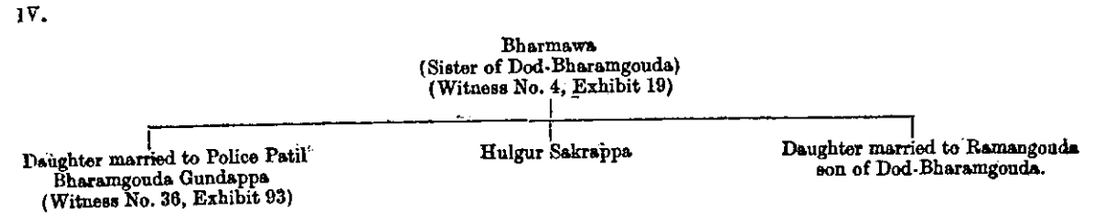
Bharmawa
(Sister of Dod-Bharamgouda)
(Witness No. 4, Exhibit 19)
Daughter married to Police Patil Bharamgouda Gundappa
(Witness No. 36, Exhibit 93)
Hulgur Sakrappa
Daughter married to Ramangouda son of Dod-Bharamgouda.

17. It may also be useful to remember that the two main parties are not closed circles and that some of the witnesses for the prosecution are related to some of the accused. Kashappa Asuti is the elder brother of accused Nos. 1 and 35 and they live jointly in the same house. Ningangouda's wife's mother is a sister of accused No. 12's mother. The wife of Dod-Bharamgouda was a daughter of accused No. 15's paternal uncle. Accused No. 50, who is brother-in-law of accused No. 15, is a son of Nilkanthgouda's maternal uncle. The Police Patil Bharamgouda's father and accused No. 32's father are brothers. The mother of accused Nos. 12, 13 and 16 was the daughter of Parvatewa's mother's sister.

18. Among the prosecution witnesses I have already shown relationships among those belonging to the Police Goudar and Hiregoudar families and those related to the deceased Shivagangawa. Chanbasangouda is a cousin of Kalkangouda and Sangangouda Police Patil of Garwad, and he has admitted that he is a friend of Basangouda. He has further stated that he was an intimate friend of Ningangouda Gojnur, accused No. 15's father. Sangangouda has admitted that he is a friend of Ramangouda. The deceased Shivangawa was the mistress of Ramangouda.

19. The learned Judge arrived at his conclusions after considering in great detail the voluminous evidence for the prosecution. In paragraphs 22 to 53A of his judgment he found each of the incidents related by the prosecution witnesses an improbability, subject to his finding that a scuffle took place in the backyard of Dod-Bharamgouda resulting in injuries to some persons. In paragraphs 37 to 42 and 54 to 61 he found the main prosecution witnesses unreliable. In paragraph 66 of his judgment he referred to 4 tests of the credibility of witnesses, viz. (1) integrity ; (2) disinterestedness ; (3) consistency of their evidence and (4) conformity of their evidence with human experience or probabilities, and found all the main prosecution witnesses sadly lacking when judged by those tests. I may quote the following remarks from the said paragraph :

> " Not only this but the evidence of these witnesses makes out a very abnormal story. The peculiarities in the evidence of these witnesses clearly points to their being got up witnesses. Almost each witness who must see something before deposed(?) makes out a gap occurring as among the accused exactly at a place suitable for the witness to see. One has to imagine that the accused were conscientiously and deliberately leaving gaps at every relevant stage of their activities to enable the wtnesses to see. The witnesses have acted where they ought not to act and did nothing when they should have done something definite. All witnesees who claim to have seen the occurrences at one stage or another have come to the spot notwithstanding the terror which they felt from the accused. They persisted to remain present from stage to stage in spite of their terror and apprehensions. They without exception did not act. None went to the rescue of the victims. None protested forcibly to make himself felt. None tried to collect the other villagers to stop the mischief. There were 51 accused on one side but there was the whole village on the other which consisted of about 400 houses. The normal population of the village on the general counting of 4 persons per house would be about 15 to 16 hundred souls and there is evidence in this case that the population of the village is over 1,000. It cannot be difficult for 20 or 30 or 50 people to collect and stop such atrocious crime from being perpetrated. Each witness has tried to explain his inanity on the ground that the village was deserted and none could be found."

20. He held that there was something seriously wrong with the first information (exhibit 66) given by Dyamangouda to the Police Sub-Inspector of Gadag on the night of the 21st March 1942. He took the view (paragraphs 72 to 74) that the weakest part of the prosecution case was the absence of the *corpus delicti* i. e. absence of the bodies of Shivasngawa and Bagangouda and of satisfactory proof of the destruction of their bodies, and that in its absence it was unsafe to convict any of the accused.

21. The voluminous character of the evidence which provided the basis for the Judge's conclusions was largely the result of the lengthy, detailed and meticulous cross-examination of each witness carried on by seven Pleaders, the witnesses being cross-examined not only with reference to their statements made in the Committing Magistrate's Court and the statements made by them to the Police, but also in several cases with reference to their statements recorded under section 164 of the Criminal Procedure Code, and such cross-examination being based not only on actual contradictions but also on prior omissions to state things stated in the Sessions Court. Most of the important witnesses for the prosecution were also questioned at length by the learned Judge himself. With reference to the witnesses' statements made to the Police, the Sub-Inspector was cross-examined with reference to different statements of as many as 23 witnesses extending over 10 pages of print.

22. We may say even at this stage, without any detailed examination of the reasons which induced the learned Judge to acquit the accused, that some of this conclusions are manifestly wrong.

(1) His theory that the Gojnurs had been brought into the case as accused at a later stage of the case (paragraph 80 of his judgment) is contradicted by the first information report (Exhibit 66) made by Dyamangouda to the Police Sub-Inspector of Gadag on the night of the 21st March 1942. Therein Dyamangouda said that Narayanappa Pujar had " told him that Gojnur party people had fought and had beaten Bharamgouda and Basangouda and others of Kadadi. " Besides, several accused (accused Nos. 3, 6, 7, 8, 21, 22, 23, 34, 44 and 47) said in their statements to the Court that they had been asked to depose falsely in this case by Nilkanthgouda and others and that as they had declined they had been made accused in the case. Accused No. 3 was arrested on the 27th March 1942. Therefore, if his statement is to be believed, he was asked to depose against the Gojnurs before that date. Certain witnesses (Parvatewa, Amarappa, Bhimappa, and Nilkanthgouda) who were examined on the 22nd March 1942, have taken the names of several of these accused (accused Nos. 21, 22 and 47), and there is nothing to show that their statements to the Police were different with regard to those accused. Therefore, if their statements are true, those accused persons must have been asked to depose against the Gojnurs at a very early date. Besides, the Police Sub-Inspector says that when he commenced his investigation none of the accused were to be found in the village. If the Gojnur accused disappeared as a result of the appearance of the Police Sub-Inspector in the village the probability is that it was because they knew that there were some accusations against them. The theory, therefore, that the Gojnurs had been brought into the case at a late stage does not appear to have any substance.

(2) The learned Judge has said that Nilawa could not have been in the village on the date of the offence. Th Police Sub-Inspector has stated that shortly after his arrival at the village on the 22nd March he saw Nilawa at about 3-30 a.m.

(3) According to the learned Judge the blood which was found in front of Basangouda's house and which was seen by the *Panchas* on the morning of the 22nd March could not have been Basangouda's blood, though it might be Ningangouda's blood. The *Panchas* found a piece of ground

about 6 inches by about 9 inches covered with blood, and the Chemical Analyser has certified that the blood contained in the handful of earth taken from that place and sent to him is human blood. One of the arguments of the learned Judge is that if the blood was Basangouda's there would have been drops of blood on the road along the route by which he is alleged to have been carried away. But the *Panchas* do not appear to have looked for such drops of blood on that route. The *Panch* who was examined on this point is not questioned on this point. There was no suggestion or question to any witness suggesting that the blood might be of Ningangouda. There is a great deal of evidence that Basangouda was beaten as soon as he came out of his house by the front door by several of the accused.

(4) The learned Judge has held that the story that wood fuel was added to the fires in the compound in which Nagappa's fodder was stacked, is a later invention. That conclusion is in conflict with the evidence of the *panchnama* (exhibit 82) in which it is stated that besides ashes and bones which were found at the place where the two persons are alleged to have been burnt "there were also pieces of wood and charcoal". There is no doubt that the Police Sub-Inspector's diary mentioned only ashes and pieces of bones. Dyama Kindri, in his statement under section 164 which was recorded on the 29th March 1942, stated that after Basangouda had been thrown on to the burning fodder stack he attempted to get out of the fire, that thereafter accused No. 12 struck him with a stick and that "again dry fodder was thrown over him and also some fuel was thrown thereon". In view of this statement and the *panchnama* it is not possible to hold that the allegation that wood fuel was added to the fire was a later invention, though it is true that several witnesses did not mention the addition of wood fuel in their statements to the Police and the Committing Magistrate.

23. The learned Judge, again, has made certain statements in his judgment which are in clear contradiction of the evidence. For instance :—

(1) He says that Channaya stated to the Committing Magistrate that he saw a woman made naked while near the stack of Nagappa and thrown on to the fire. But what Channaya actually stated to the Magistrate was : "I saw one woman stripped off her clothes and seated." This does not mean that she was stripped of her clothes at the place where she was seated.

(2) In paragraph 55 of his judgment the learned Judge comments on Irappa Doni's not informing Bashetti and Nilawa, who were in Ramangouda's house, about the disgraceful condition of Shivagangawa which he had seen. Irappa, however, does not say that he went inside Ramangouda's house at all. He says that he was going there to inform Bashetti of what he had seen, but that on hearing shouts from the direction of the Ramlinga temple he went to the verandah of one Baligar near the temple.

(3) In paragraph 58 of the judgment it is stated that it is difficult to believe that Nilkanthgouda was struck. The *panchnama* exhibit 54, however, is about the injury which the *panchas* found on Nilkanthgouda, viz. a contusion on the head on the left portion thereof, and the *Panch* who has been examined also has deposed to having seen the injury.

(4) In paragraph 59 of the judgment the learned Judge has stated : "No witness for the prosecution, and there are many witnesses for the prosecution on this point, has stated about Pampanna being there in the backyard of Dod-Bharamgouda." Chanbasangouda, however, has said (paragraph 9 of Exhibit 24) that when he was extinguishing the fire in the backyard of Dod-Bharamgouda there were several persons there and he has named Pampanna Vali as one of the persons present.

(5) In paragraph 60 the learned Judge has said : "I am not in the least inclined to believe anything about his (Police Patil Bharamgouda's) injury." There is, however, a *panchnama* (exhibit 88) to the effect that Bharamgouda had big injuries on the head from which blood had come out and had dried up. According to Dr. Sohoni (exhibit 89) the injuries on the person of Bharamgouda Police Patil were three in number.

(6) In paragraph 60 of the judgment the learned Judge says : "He (the Police Patil) claims to have walked up that distance from the village to Gadag," (when he went to the dispensary at Gadag on the 23rd March 1942). The Police Patil, however, has said : "I was sent to the dispensary at Gadag on the 23rd March 1942." This does not necessarily mean that he walked up to Gadag.

(7) In paragraph 72 of his judgment the learned Judge has remarked : "All that we have got in this case about *corpus delicti* are three petrous bones belonging to the base of the skull, two of them are right and left of the base of the skull and the third piece belongs to a third skull." There is no basis, however, in the evidence to show that one of the pieces belonged to a third skull. All that Dr. Mandlik, the Anatomist, (exhibit 77) has said is that the bones which he examined belonged to more than one human beings.

(8) In paragraph 22 of his judgment he has made the remark : "it looks very probable that there must have been a fight in the backyard of Dod-Bharamgouda where persons of both the parties must have collected and must have indulged in a fight resulting in injuries on both sides." There is no evidence of any injury caused to any of the accused.

(9) In paragraph 22 of his judgment the learned Judge speaks of there being no evidence as to accused Nos. 10 and 6 returning to the Ramlinga temple after setting fire to the stack of Nagappa. But Chanbasangouda, in paragraph 3 of his deposition, speaks of those accused "returning and passing by us (him and Ningappa Gojnur) and going in the direction of Ramlinga temple."

(10) In paragraph 34 of his judgment the learned Judge says : "No witness, however, says anything about her (Shivagangawa's) shrieks and cries.....There is no struggle on the part of Shivagangawa alleged." But Channaya in paragraph 2 of his deposition has said : "When I first saw the woman she was crying and weeping and entreating those round about her not to burn her." Chanbasangouda says that she was struggling and entreating them to leave her.

(11) In paragraph 56 of his judgment the learned Judge has remarked : " Ningangouda did not mention to the Police anything as to his having seen any incident through the chink in his door." In the list of Ningangouda's statements made to the Police as elicited in the evidence of the Police Sub-Inspector, there is no statement on this point ; nor is there any admission on the point in Ningangouda's deposition.

(12) The learned Judge has repeatedly referred to the injuries received by Bharamgouda, Police Patil, Ningangouda, Shivangouda, Bashetti and Nilkanthgouda as *trivial* injuries. There is no doubt that the injuries of Shivangouda, Nilkanthgouda (who did not go to the dispensary) and Dod-Bharamgouda may merit this description. But Bharamgouda received three injuries on the head (one contused wound and one contusion), Ningangouda received 8 injuries (5 weal marks, a contused wound on the head and a contusion on the right forearm) and Bashetti got 9 injuries (4 weal marks, 2 contused wounds on the head and a contused wound on the right leg), all caused apparently by sticks or stones, and they can hardly be described as trivial. It is true that the injuries were described by Dr. Sohoni as *trivial*. But what he meant by that description, as he himself explained, was that they were not grave, grave injuries being, according to him, fractures which might endanger human life and as involve suffering on the part of the injured and require rest in bed.

(13) The learned Judge has made use of several allegations made by the accused in their statements which have not been proved and some allegations about certain persons not made by the accused themselves ; for instance, that accused Nos. 1 and 35 were told to give evidence against the Gojnurs and that on their declining to do so they were included among the accused. Similarly, at more than one place he has made use of the allegation that Mudkappa kept a Kurbar woman alleged to be the sister of witness Dyama and that, therefore, he was boycotted by several members of his caste, i.e. Ganiger caste, and he has concluded that on this account Mudkappa might be inimical towards accused Nos. 2, 38, 40 and 41. There is, however, no evidence that he has kept such a woman and he has such said nothing specifically against any of the four Ganiger accused Nos. 2, 38, 40 and 41.

(14) In coming to the conclusion that Shivagangawa and Basangouda could not have been burnt in the manner alleged, i.e. by having fodder heaped on them which caught fire and by further fodder and wood fuel being piled on the initial heap, he has relied on the evidence of Gangappa, a goldsmith (exhibit 67), who has described the process by which dead bodies of Hindus are cremated and said : " If a cart-load or two of fodder are stacked on a human body placed on the ground the body would not burn. The body would not be burnt even if a cart-load or two of fuel wood are added on that fodder and then burnt." This witness has not stated that he had ever seen this process being followed and producing no result. The learned Judge has completely ignored the important testimony of Dr. Mandlik (exhibit 77) on this point : " If a body is placed on the ground and then it is covered by fire one or two cart-loads and then again that is covered with one or two cart-loads of fuel wood, the body should burn. All depends upon the amount of fire and heat reaching the body. "

(15) Speaking of the alleged attack on Basangauda's house and the method by which the attack was made, the learned Judge has remarked (paragraph 43) : " If such a bar (one like article 4, which is 5 feet long) is used to force open a door, it would be used with enormous force and one would expect corresponding marks of violence on the front door which was subject to violence for 48 minutes. The *panchnama* of the front door does not show any such marks of violence." In the *panchnama* (exhibit 80), however, it is stated : " The front door also is pushed by iron bar and there are marks here and there. "

(16) In paragraph 43 of his judgment the learned Judge has remarked : " Apart from the marks on the door (the front door in Basangouda's house) the blows on the door would loosen the door frame from the wall and even damage the wall. *Panchnama* is silent about it." About the door frame there is some mention in the *panchnama*, exhibit 80 : " A wooden piece of about 1 cubit has gone off from the inner portion of the wooden frame." This has not been noticed by the Judge, nor has he considered the question whether this might be the result of violence used on the door frame.

24. All this suggests to our mind that the learned Judge has not considered the evidence with an open or unbiassed mind. It was natural, in a case of this nature, that a large number of discrepancies would occur, not only in statements made by the same witness at different stages, but among the different witnesses, as to the exact part taken by each accused and several other matters. The Judge does not seem to have observed the very large extent of agreement which is to be found in the depositions of the witnesses and the great difficulty of coaching up numerous witnesses who have claimed to be eye-witnesses in the particulars of a number of incidents within a few hours, specially if the arrival of the Police Sub-Inspector at the Village at 2 a.m. on the 22nd March could not have been anticipated. The learned Judge has come to the conclusion that nothing more than "some sort of fight" took place at Kadadi and that it probably took place at 4 or 5 p.m. on the 21st. That would give those responsible for concocting the voluminous and intricate evidence in this case only 9 or 10 hours to do their difficult work. Such persons had admittedly made no complaint of arson before, when the stacks of several persons of their party had caught fire in the first three months of that year. There is a large amount of evidence that after the offence had been perpetrated the villagers closed their doors and did not venture outside or left the village altogether. The Police Sub-Inspector could not find any of the accused in their houses and he was unable to get anybody in the village to serve as a *Pancha* ; he got two *Panchas* from the neighbouring village of Hadgali and one from the village of Garwad. In such a state of affairs the difficulties of concocting false evidence and keeping it ready against the arrival of the Sub-Inspector must have been considerably enhanced.

25. The improbability of this case having been concocted from top to bottom appears to us to be clear on a consideration of the following facts and circumstances which cannot, in our opinion, admit of any serious doubt.

(1) Dyamangouda of Hombal arrived at Gadag Police Station at about 11-30 p.m. on the 21st March and reported that Narayanappa Pujar had come to him at 7 or 7-30 p.m. and told him that

Gojnur party people had fought and beaten Bharamgouda and Basangouda and others at Kadadi and that he (Narayanappa) being terrified had ran away to Gudadar. It is hardly likely that Nilkanthgouda (stated to be at the bottom of the case) and others would choose this form of conveying the first information to the Police. Everything points to Narayan having gone to Hombal on his own initiative, if so, the villagers would have no means of anticipating the arrival of the Sub-Inspector at 2 a.m., on the same night. The defence suggestion is that Narayan must have left Kadadi by the evening train which leaves the station at 6 or 6-30 p.m., that he arrived at Hombal by the said train at 7 or 7-30 p.m., and that he would have known at least of Shivagangawa's burning if that actually had taken place ; and it is contended that the form in which he gave the information to Dyamangouda is proof that she could not have been burnt alive. This theory involves the fabrication of evidence between 6 p.m. and 2 a.m., that is in about 8 hours, which appears to us to be physically impossible, for it involved not only preparing a false case but coaching different witnesses, burning a stack, getting bones from elsewhere, throwing them into the fire, doing substantial damage to two doors in Basangouda's house and throwing human blood on a space 6" × 9" in front of the house, along with the coincidence that Basangouda and Shivagangawa disappeared on the same day from the village.

(2) On arrival the Police Sub-Inspector felt a bad smell and was told by the village servants, including Yamanappa, that Shivagangawa and Basangouda had been burnt alive.

(3) The Police Sub-Inspector also saw a burning heap or 2 heaps and in the morning he made a *panchnama* regarding them, among the articles recovered therefrom being human bones and charcoal. According to the medical evidence the bones belonged to more than one person.

(4) The Police Sub-Inspector saw the condition of Basangouda's house before morning. He found the back door broken and the house in a disturbed condition ; and in the morning an area 6" × 9" was found stained with blood which has been certified as human blood.

(5) There were none of the Gojnur accused in the village nor any of the other accused. Even *panchas* were not locally available.

It should be remembered that on the 22nd March the Sub-Inspector examined nine witnesses, viz. Bharamgouda son of Basangouda, Parvatewa, Amarappa, Bhimappa, Irappa Doni, Nilkanthgouda, Nirgangouda, Bashetti and the Police Patil Bharamgouda, and two others who are dead. If anybody wanted to create false evidence one would except him to concentrate most on the burning of Shivagangawa and Basangouda ; yet only two (Irappa and Bharamgouda son of Basangouda) out of the nine witnesses examined on the 22nd claim to be eye-witnesses of the two burnings. On the 23rd March, seven witnesses were examined and only one of them, Mahadevappa, speaks of having seen the fires wherein the bodies had been burnt. On the 24th, 23 witnesses were examined, and out of them only one, Chanbasangouda, is a witness for the burnings. On the 25th, 19 witnesses were examined, and only Dyama out of them speaks of having witnessed the burning of Basangouda and seen one other heap. The question also arises, could not the relations of the deceased take this opportunity of implicating the accused in the main offences of murder ? Only Bharamgouda among those relations speaks of having seen the body of his father being burnt, yet he mentions no accused person specifically in his deposition.

26. Another feature of the evidence as to the two burnings is that out of the witnesses who depose to them, viz., Irappa, Chanbasangouda, Channaya, Pampanna (relating to Shivagangawa's burning) Chanbasangouda, Dyama, Bharmappa son of Basangouda, Pampanna, Virupaxgouda and Mahadevappa (relating to the burning of Basangouda) only some, viz., Channaya, Dyama, Virupaxgouda and Mahadevappa, mention the names of certain accused specifically. This state of things rather suggests the probability that most of those who might have seen the burnings were too terrified to notice who were actually concerned in the gruesome offences or cannot be certain whom they saw on the said occasions.

27. This may be a convenient place for examining the propositions of law enunciated by the learned Judge which appear to have influenced him considerably in the process of his arriving at the conclusion that none of the accused is guilty ; namely, (1) that as most of the prosecution witnesses have mentioned "all the accused" as having been present at the different incidents, the learned Judge had only two alternatives before him, viz., (*a*) to believe them and to convict all the accused and (*b*) to discard the evidence and acquit all the accused ; (2) that if a witness is shown to have given false evidence in one particular the whole of his evidence must be rejected as unreliable.

28. It is true that most of the prosecution witnesses have deposed, with reference to the incidents at Dod-Bharamgouda's backyard, near Kashappa Asuti's house, Hulgur Sakrappa's house, the Ramlinga temple, Basangouda's house and Nagappa's stack, to the presence of the 51 accused or the accused generally. Such statements no doubt indicate a bias against the accused and obviously cannot be accepted at their face value. It is physically impossible to notice so many persons individually on occasions when such crimes are perpetrated by a body of people, or to remember each one of those individuals several months afterwards. This position is conceded by the learned Advocate General. But such a consideration will not apply where some persons are specifically mentioned as having been concerned in a particular incident, and we are of opinion that in spite of a witness's having mentioned all the accused as having been present at an incident or a number of incidents, the prosecution was entitled to get such specific allegations against individual accused persons examined on their merits, for instance, by reference to the statements made by such witness on the point before the Police, or before the Committing Magistrate or under section 164 of the Criminal Procedure Code, and by reference to the depositions of other witnesses. This process has in fact been followed by the learned Judge. That being so, we are clearly of opinion that the learned Judge's view that he was bound to convict all the accused or to acquit them all and that there was no third alternative open to him was erroneous.

29. The question, however, remains whether the witnesses who have deposed to the presence of all the accused should not be regarded as irresponsible if not worse, and whether on that account their statements as to individual accused persons should not suffer seriously in their credibility. On a consideration of the whole evidence, however, we are inclined to take the view that when witnesses are speaking of the presence of all the accused, their normal bias against the Gojnurs as well as the information subsequently obtained by them (for instance, that none of the accused was found in the village on the 22nd March) and their normal methods of inference, not always strictly rational among the villagers, have all played their part and that their assertions in this respect are not deliberate so much as the result of a moral conviction that at the more important incidents all the accused must have been present.

30. Taking the second proposition, it was based on certain remarks of Young J. in *Asmatulla* v. *Emperor* A.I.R. 1933 All. 896. His Lordship remarked that it was the plain duty of the Court, when it found the prosecution case false and manufactured in material and vital particulars and supported by perjured evidence, to throw the whole case out altogether. He deprecated the practice of the Courts "to search labouriously and anxiously with a microscope for some truth which might be buried in the evidence as waste of valuable time and a danger to the public". In that very case King J. made certain remarks which in our opinion are appropriate to the point under consideration.

> "I view with profound distrust any general observations purporting to fetter the discretion of trial Courts in the matter of believing or disbelieving witnesses. If a witness had told a lie on one point, but the Court nevertheless conscientiously believes the witness to be speaking the truth on another point, it is useless to tell the Court that, according to a general observation made by a learned Judge (with reference to a totally different state of facts), the witness should be disbelieved on every point. Belief of this sort does not, or at least should not, yield to the dictates of authority. The trial Judge must decide each case on its merits and I think it is impossible to lay down any general rules for his guidance in believing or disbelieving testimony."

With respect, we think that these observations embody the correct position in law and are pertinent to most of the witnesses in this case.

31. On the question of the absence of *corpus delicti*, the learned Judge, after saying that all that we have got in this case about the *corpus delicti* is three petrous bones belonging to the base of the skull, two pairs of condoyles (a portion of lower jaw), i.e. two right and two left bones, two pieces of cervical vertebra, three bones of the phalanges, one tooth and a number of unidentifiable human bones and some other bones which cannot be identified as of human beings or of animals, raised the question whether these were bones or remnants of the bones of Shivagangawa and Basangouda. He referred to the evidence of Gangappa (exhibit 67) that these two persons could not have been burnt to death if the manner or process of burning had been as alleged, and asked the question what had become to the other major bones and whether they could have been removed without disturbing the fire heaps. He thought that the *panchnama* read as if there was only one heap where a single human body had been burnt and argued that it was improbable that fodder should have been brought from the school compound or that wood fuel should have been added to the burning stack as alleged. He then referred to Wills on Circumstantial Evidence and particularly to a passage at page 346 therein: "A conviction for murder is, therefore, never allowed to take place, unless the body has been found or there is equivalent proof of death by circumstantial evidence leading directly to that result, and many cases have shown the danger of a contrary practice."

32. In this discussion the learned Judge appears to have largely ignored the fact that the prosecution case for the deaths of Shivagangawa and Basangouda by burning is based not only on the evidence as to the manner in which the bodies of those persons were burnt (no question of the finding of those bodies could arise from the very nature of the case), but also on evidence as to the following (leaving out some evidence which appears to us to be unreliable):—

> (1) The disappearance of both Shivagangawa and Basangouda from the village coupled with the absence of any evidence suggesting that those two persons eloped together or disappeared under suspicious circumstances, and the improbability of the relations of those two persons supporting the case of their murder if such elopment had actually taken place. (2) The desire expressed by some of the accused that the said two persons should be burnt to death. (3) The fact that they were seen being lifted up and carried towards Nagappa's burning stack. (4) The fact that they were seen being thrown on to the said stacks and thereafter being pushed back and being covered with fodder and that later wood fuel was added to the fire. (5) The finding of the bones belonging to more than one human beings with ashes and charcoal at the place of the fire on the morning of the 22nd March; the evidence as to (2), (3) and (4) being direct and not circumstantial.

33. The question of assessing of this evidence and finding it all unreliable is one thing; it is another thing to find that because it suffers from the complete absence of *corpus delicti* it is unsafe to convict any of the accused.

34. Two criticisms made generally against nearly every one of the eye-witnesses are, firstly, that they did nothing to save the victims by raising an outery, appealing to the Goudars or collecting people, or to report the matter to the Police or to see that such a report reached the authorities; and secondly, that their evidence suggests that even when a number of the accused were dealing with a particular victim, for instance, beating or burning him, they left convenient gaps or spaces for the witnesses.

35. As to the first point, it is to be remembered that the Gojnurs are rich and influential people; and if the prosecution case is believed that the people of the Gojnur party caused injuries to the Police Patil, beat Ningangouda the Police Patil's brother, Bashetti and Basangouda in broad daylight and burnt to death Ramangouda's mistress Shivagangawa and Basangouda, it can easily be believed that the prosecution story (as deposed to by several witnesses) is true that these acts of the accused spread terror in the village. Ningangouda says that he remained in his house since he arrived there. Irappa says that all the people in the lane near the Maruti temple shut themselves in. Yamnappa speaks of watchmen being kept by the Gojnurs in all the exists from the village, and of none of the residents standing outside

their houses to see the burning of Shivagangawa. Kashappa heard the accused say that if any one went to the Police Patil to complain they would see how he lived in the village. Bhimappa and Amarappa speak of the village having been terror-struck. Yet the learned Judge thinks it unnatural that even Irappa Doni, a boy of 15 or 16 years, did not either "rush up to the crowd to entreat, protest, fight or struggle and bawl out." About Parwatewa he has remarked that her conduct in not telling Virupaxgouda and two others, who had come to pay a condolence visit, to do something as to informing the authorities of the murder is not probable. The failure to ask people to move the authorities is consistent with a fear of the consequence at the hands of the Gojnurs and the realisation that no such steps would bring Basangouda or Shivgangawa back to life.

36. As to the second point, the learned Judge has remarked (paragraph 66 of the judgment): "Almost each witness who must see something before deposed (?) makes out a gap occurring as among the accused exactly at a place suitable for the witness to see. One has to imagine that the accused were conscientiously and deliberately leaving gaps at every relevant stage of their activities to enable the witness to see." In our opinion this is a somewhat extravagent hypothesis to make. It is not difficult to imagine that the accused (if the prosecution story be essentially true) who had the boldness to commit two murders in broad daylight were not careful enough to screen themselves or their actions from possible eye-witnesses and that as they did not stand still as an organised body at different stages of their proceedings, but were moving about, opportunities readily occurred for certain people not belonging to their party to see what was going on.

37. At this stage I wish to indicate briefly the nature of the prosecution evidence.

I. The unlawful assembly in the backyard of accused No. 28 and the throwing of stones on the persons assembled in Dod-Bharamgouda's backyard. Witnesses on this point are Bashetti, Ningangouda, Irappa Doni, Bharamwa, Yamnappa, Pampanna, Bhimappa Sirur, Nilkanthgouda, Kashappa, Narayan Pujar and Bharmagouda Police Patil. They gave evidence as to the fire in Dod-Bharamgouda's backyard, its being extinguished, the quarrel between accused No. 34 and Ningangouda, the arrival of the accused in the backyard of Dod-Bharamgouda, Shivgangawa's abusing of the Gojnurs, the throwing of stones by the accused, and Dod-Bharamgouda, the Police Patil and others being hit by the stones. According to Bashetti accused Nos. 9 and 10, besides throwing stones instigated others to do so. Ningangouda named certain accused as having thrown stones. Bhimappa says that accused Nos. 10, 11, 12 and 13 told others to attack the persons in Dod-Bharamgouda's backyard. The Police Patil names 31 accused by names as having been present in accused No. 28's backyard. There is a medical certificate regarding the injuries caused to the Police Patil and to Shivangouda deceased as well as to Ningangouda who also received beatings at a later stage. One of the injuries noticed on Ningangouda, a contusion on the head, was caused in the opinion of the Doctor by a stone.

II. The beating of Ningangouda on or near the *katta* of Kashappa. The witnesses are Ningangouda, Bashetti, Bhimappa Sirur and Kashappa. There is evidence that Ningangouda was pulled down by accused No. 12 and others, beaten with sticks by several accused persons, and there is a medical certificate regarding the injuries, numbering 8, sustained by Ningangouda.

III. The beating of Bashetti. Witnesses are Bashetti, Bhimappa Sirur and Nilawa: They depose to Bashetti having been beaten with sticks near the houses of accused Nos. 34 and 28 by different accused persons and to accused No. 9's having instigated others saying, "Bashetti is still alive, beat him." There is a medical certificate regarding Bashetti's injuries numbering 9.

IV. The second incident in Kashappa's house after Basangouda, Ningangouda and Shivangouda had taken shelter therein when some of the accused came there. There is the evidence of Ningangouda and Kashappa on this point.

V. Shivagangawa's being forced to come out of Hulgur Sakrappa's house and of her being stripped of her clothes. The witnesses are Bharmawa, Irappa Doni, Yamnappa and Bhimappa Sirur. Bhimappa says that accused No. 10 called on others to ask Shivagangawa to come out of the house and said that otherwise the house would be set on fire, whereupon Shivagangawa came out and said, "Are you going to take my life, do what you like." Yamnappa says that accused No. 10 said that the abuses of Shivagangawa could not be endured any further and that none should intercede in the matter, let the consequences be whatever they might. Bharmawa says that the accused said that unless the door was opened, the house would be set on fire and that Shivagangawa on coming out said that they might do what they liked if they were men. She was then dragged, according to the witness, on to the road by certain accused persons named by the witness, after which accused No. 17 removed her waistband and accused No. 48 removed her *sari*. Irappa also heard people shouting that the door should be opened or the house would be set on fire, and he speaks of accused No. 17's removing Shivagangawa's waistband and accused No. 48's removed her *sari*.

VI. Shivagangawa being taken in a nude condition *via* the Gojnurs' houses to the Ramlinga temple, her being seated there and being further disgraced. The witnesses are Yamnappa, Bhimappa Sirur, Chanbasangouda, Irappa Doni, Ira son of Nilawa and Mudkappa. Yamnappa heard accused No. 48 telling women near accused No. 9's house to go inside as Shivagangawa was being brought there. Chanbasangouda says that as Shivagangawa was being taken towards the Ramlinga temple accused Nos 10 and 8 went towards the direction of the stack of Kumbar Sangappa, also referred to as Nagappa's stack, that accused No. 10 said that the stack was to be burnt, that the witness saw flames of fire and that sometimes later accused Nos. 6 and 10 returned and went in the direction of the temple. Irappa Doni deposes to seeing accused No. 10's putting a *chappal* into the mouth of Shivagangawa and striking her with another *chappal* to accused No. 9's kicking Shivagangawa and standing on her body and saying that if anybody wanted to rescue her he might do so; and to accused No. 10's going up and down the road in front of the temple saying that Shivagangawa had been seated there naked and that anybody wanting to see her might do so. Mudkappa says that

from the verandah of his tea-shop he heard accused No. 10 shouting that Shivagangawa had been made naked and seated and that anybody wanting to see her might do so.

VII. Shivagangawa's being carried from the Ramlinga temple *via* Kembannavar lane to Nagappa's stack and being burnt alive there. The witnesses are Channayya, Chanbasangouda, Pampanna and Irappa Doni. Channaya names 10 accused persons as those who held her before she was thrown on to the burning stack. Chanbasangouda says that 10 persons held her and flung her on to the stack and that after a time accused Nos. 10 and 50 remained there and later left the place. Pampanna says that he saw Shivagangawa lifted and thrown on to the fire. Irappa Doni says that he saw 10 persons holding Shivagangawa and throwing her on to the burning stack.

VIII. The next part of the prosecution case is that thereafter the accused left in order to get hold of Bashetti. There is evidence on the point of Chanappa, Irappa Doni, Parvatewa, Chanbasangouda and Nilawa. Chanayya says that the accused went into the village saying that Bashetti should be brought there. Nilawa says that she heard accused No. 37 saying that they had finished with the woman and that they would attend to a fate of the man.

IX. The attack on Basangouda's house and the beating of Basangouda. The witnesses are Ningangouda, Bhimappa Sirur, Bharamgouda son of Basangouda, Parvatewa, Amarappa and Nilkanthgouda. Ningangouda after being beaten first went inside Kashappa's house with Basangouda and his brother Shivangouda and chained the door from inside. Shortly after accused No. 14 and others came there, tried to get them put out of the house and then went away. Ningangouda then came to his house with his brother and on hearing a mob coming, closed the door from inside. He heard accused No. 14 abusing Basangouda and telling to come out and also heard accused No. 14 telling others to bring an iron bar. Through a chink in his door he saw accused No. 14 bringing an iron bar and saw an attack on the front door of Basangouda, and he heard accused Nos. 35, 38 and 48 saying that they were going to attack the door. Bhimappa Sirur says that he saw accused No. 10 for a moment near Basangouda's house and that he saw other accused persons trying to force open the back door of that house. He and Nilkanthgouda went to accused No. 10 and asked him to intervene and accused No. 10 promised that he would do so if Nilkanthgouda gave a guarantee that Basangouda would take no steps regarding the burning of Shivagangawa. He saw Basangouda going out and being struck by several accused persons including accused No. 25 who carried an iron rod. Bharamgouda and Amarappa depose to attacks made on the doors of the house, to the entry into the house effected by some of the accused and to seeing Basangouda lying in front of his house in an injured condition. Parvatewa speaks of 6 or 7 persons trying to force open the front door with small iron bars and their going to the back door of Basangouda's coming out of the house and of some accused beating him with sticks. Nilkanthgouda speaks of the attempt to break open the front door by certain accused persons whom he names and also to breaking of the back door by certain accused persons named by him. He mentions several accused persons as having beaten Basangouda and also his and Bhimappa's going to accused No. 10 and the latter's wanting him to give a guarantee as mentioned above. Bashetti, from the cattle-shed of Dod-Bharamgouda, heard the sound of Basangouda's door being broken and the cries and entreaties of Basangouda. At 2 or 3 p.m., he went with Irappa Doni to Basangouda's house and found some cotton inside the house on fire and saw Amarappa trying to extinguish the fire. He found the iron bar, article 4, in the kitchen, one of the two shutters of the kitchen doors lying there and the planks of the back door near the threshold of the kitchen. Irappa heard the accused going in the direction of Basangouda's house shouting, " Open the door or the house would be set on fire." He heard the sound of the door being forced open with an iron bar." Chanbasangouda speaks of accused Nos. 12 and 25 going to Ningappa and asking for a bar, accused No. 25's fetching accused No. 15 and accused No. 15's getting an iron bar, after which accused Nos. 12, 15 and 25 went in the direction of Basangouda's house. As to the condition of the house of Basangouda next morning there is a *panchnama*, exhibit 80. The different parts of the back door and one shutter of the middle door were brought to the Court. The *panchnama* speaks also of marks of blood having fallen in front of Basangouda's house.

X. Carrying Basangouda to the burning stack. The witnesses are Ningangouda, Bhimappa Sirur, Bharamgouda son of Basangouda, Parvatewa, Nilkanthgouda, Amarappa and Chanbasangouda. There is a good deal of evidence on this point showing that accused Nos. 10, 11 and 28 (who is dead) took the initiative in getting Basangouda, carried from the place where he had fallen on being beaten and that several of the accused took part in carrying Basangouda to the burning stack. Ningangouda says that accused Nos. 10, 11 and 28 said that Basangouda should be taken away dead or alive, accused No. 28 adding that if Basangouda was left alive the houses of the Gonjurs would not be safe. According to Nilkanthgouda it was proposed by accused Nos. 10, 11, 12 and 28 that Basangouda should be burnt, and in spite of his (the witness's) entreaties to accused No. 10 and others when Basangouda was lifted and taken away, they said that they would take him to the burning stack and burn him there. Nilawa says that she heard accused No. 37 saying that they had finished with the woman and that they would attend to the fate of the man. She also says that accused No. 10 said that Basangouda should not be left as that would be harmful. Bashetti heard people saying that they had burnt the woman and that they would also burn him (Basangouda).

XI. Burning of Basangouda in Nagappa's stack. The witnesses are Chanbasangouda, Pampanna, Dyama, Parvatewa, Mahadevappa and Bharmagouda son of Basangouda. Chanbasangouda, Pampanna and Dyama say that they actually saw Basangouda being flung on to the blazing stack, that Basangouda rolled down and was pushed towards the stack, that fodder was brought from the neighbouring school compound to the stack and that he was thus burnt to death. Bharamgouda saw the body of his father being burnt standing near the Sarafs' houses. Virupaxappa, Police Patil of Hadagali, and Mahadevappa of the same village say that they arrived some time after Basangouda had been thrown on to the fire. They saw a fire or fires still burning and certain accused persons present who were attending to the fire.

Regarding the burning of Shivagangawa and Basangouda there are also the *panchnama* of the site where the Sub-Inspector found the fires (exhibit 82), the admission of accused No. 44 that his stack was burnt, the evidence of the *panch* and the Sub-Inspector and the evidence of Dr. Mandlik, the Anatomist, regarding the bones as well as the opinion of the goldsmith Gangappa. Prosecution witnesses described the following method by which the two persons were burnt to death. The victims were first thrown on to the burning stack and rolled down. Then they were pushed towards the stacks with sticks, after which fodder was brought from the local school compound and thrown on the bodies when the fodder caught fire. Thereafter some fodder and chaff were brought and wood fuel was brought from the compound of accused No. 12 and elsewhere and added to complete the burning. The fires went on burning for several hours till the arrival of the Sub-Inspector at the village.

XII. The accused's search for Bashetti in his house and their visit to Mudkappa's shop. The witnesses are Nilkanthgouda and Mudkppa.

XIII. Bashetti and Irappa's escape via Bashetti's house to Garwad and their going to Hadgali the next morning. The witnesses are Bashetti, Irappa, Amarappa, Nilawa and Sangangouda, the Police Patil of Garwad.

38. The most important part of the learned Judge's judgment is contained in paragraphs 16 to 53A thereof where he seeks to show that beyond the occurrence of some kind of fight in the backyard of Dod-Bharamgouda, the occurrence of the incidencs alleged by the prosecution was improbable. After demolishing the different parts of the structure of the prosecution case he has found it comparatively easy to dismiss each of the main witnesses as unreliable. It seems to us that this kind of approach to the question of the credibility of the witnesses has vitiated his consideration of the matter. The learned Judge has first dealt with the question of motive. According to the prosecution, the motive for the offence alleged is to be found in several circumstances. In the first place, it was alleged that sometime in August 1941 an unnatural offence was committed by Isha the son of accused No. 10's daughter on Ira, a son of Nilawa, at a fair and that on its being reported to Shivagangawa she had slapped Isha, that this had irritated the Gojnurs and that thereupon accused Nos. 28 and 39 had filed two complaints of hurt against Shivagangawa and her son Bashetti. Among the witnesses for the complainants were accused Nos. 29, 42, 39, 4, 48 and 10, and among the accused's witnesses were Ningangouda, Bharamgouda and Narayan Pujar. The cases ended in the conviction of Shivagangawa and Bashetti sometime in December 1941. The accused pleaded in those cases that they had been falsely filed at the instance of accused No. 10 and Ningappa (father of accused No. 15). Thereafter various cases of burning of stacks of fodder and crops took place in the village in the first three months of 1942. Of the 12 such cases of fire, 3 fires affected the Goudars, 4 affected the relatives of the accused and 5 were unconnected with either party. In February 1942 the crop of Dod-Bharamgouda son of Ishwargouda was cut and on a complaint being made the crops were handed over to the Police Patil, but they were subsequently burnt. In all the cases the Police Patil reported that the fires were accidental. It is the prosecution case that each party suspected the other of having caused the fires and thus the feelings of the two parties had become considerably strained. On the 20th February 1942 an application was made against the Gojnurs to the Mamlatdar of Gadag wherein it was alleged that the latter had been preventing the public from using a public tank in the village. The application was written by Basangouda the deceased and was signed among others by Chanbasangouda, Narayan Pujar, Ningangouda, Bashetti, Dod-Bharamgouda and his son. Lastly, it is the case for the prosecution that Shivagangawa used often to abuse the Gojnurs, frequently taking the names of their females, and that this caused considerable irritation to the Gojnurs. There is no satisfactory evidence regarding the unnatural offence alleged to have taken place in August 1941. Though the fires were reported to have been accidental by the Police Patil, there can be little doubt that each party would suspect the other of having had a hand in them, though neither party thought it worth while to lodge a formal complaint. The application made to the Mamlatdar regarding the tank might have been perfectly justified, but it could hardly have been entirely ignored by the Gojnurs. As to Shivagangawa's habit of abusing the Gojnurs there is ample evidence. The two cases decided in December 1941 resulted in convictions of Shivagangawa and Bashetti, one of the charges against Shivagangawa being of abuse. Chanbasangouda has stated that 15 or 20 days before the offence he had heard accused No. 10 say that Shivagangawa would not stop abusing the Gojnurs unless she was burnt in a burning stack. This was said in an answer to a question by the Court, no such statement having been previously made by the witness, although he was not cross-examined on this point. Nilawa says that there was a dispute between accused Nos. 9, 10, 12, 28 and 39, on the one hand, and her mother on the other and that later on whenever her mother saw those accused persons she used to abuse them. I have already referred to the statement made by Yamnappa that he once heard accused No. 10 say that the abuses of Shivagangawa could not be endured any further. Mudkappa says that Shivagangawa was in the habit of abusing people foully. The Police Patil Bharamgouda says, "Shivagangawa was not on good terms with the Gojnurs after those complaints and she used to abuse the Gojnurs in a foul manner". According to Nilkanthgouda, after Shivagangawa began to abuse the persons collected in the yards of accused No. 28 accused Nos. 10, 11 and 28 said that she had not yet learnt a lesson.

39. We think, therefore, that the prosecution has succeeded in showing that events had taken place which had resulted in considerable estrangement of feelings between the Gojnurs on the one hand and Shivagangawa and members of Goudar families on the other and that Shivagangawa's habit of abusing Gojnurs caused considerable irritation to them.

40. Mr. Bhulabhai Desai's method of dealing with the evidence has been somewhat different from that adopted by the learned Judge. He has first directed his attack on 3 important events, viz., the burning of Shivagangawa, the burning of Basangouda and the attack on Basangouda's house, and sought to show, by detailed analyses of the evidence, that the evidence as to each of those incidents is so unreliable as to lead to the reasonable probability of its having been concocted. He has contended that if such a

conclusion can be reached the rest of the evidence would then become highly suspicious ; for if it is rendered reasonably probable that evidence has been manufactured in support of such elaborate and serious allegations those responsible for such fabrication may be deemed capable of concocting the less important parts of the prosecution case with comparative ease. His clients, he has pointed out, are entitled to the benefit of double presumption : one with which every accused person starts and the other arising from the fact that both the learned Judge and all the Assessors have found them not guilty. To those presumptions would be added the further probability or presumption just mentioned. Mr. Desai has concentrated on those parts or aspects of the evidence from which, according to him, a reasonable probability that the different incidents in question did not take place would arise. For this purpose he has relied largely on the internal evidence of each witness's deposition. For instance, with regard to most witnesses he has attempted to show that they had no reasonable occasions or grounds to have been present at the places from which, according to them, they saw the different incidents. He has reminded us of the observations of their Lordships of the Privy Council in *Sheo Swarup* v. *King-Emperor* (1934) 36 Bom. L.R. 1185, where they observe (p. 1189) that in exercising the power conferred on the High Court under sections 417, 418 and 423 of the Criminal Procedure Code " the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses ; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial ; (3) the right of the accused to the benefit of any doubt ; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."

41. Mr. Desai's attempt has been to bring out different elements of doubt in the evidence of each witness without much reference to the rest of the evidence, sometimes even without reference to what the witness has stated elsewhere in his deposition. The prosecution witnesses, without hardly any exception, have all been disbelieved by the learned Judge. In the following discussion I shall deal mainly with Mr. Desai's argument as well as those advanced by Mr. Chundrigar, as those were not intended to be supplementary to the Judge's arguments, but I shall refer briefly also to the latter where the subject appears to necessitate such reference.

42. In our opinion, to attack first the evidence as to the burning alive of Shivagangawa and Basangouda without taking such evidence in its proper sequence was a wrong method of approach, a method which Mr. Desai also followed with reference to the other incidents, as the earlier incidents would have a bearing on what followed later, specially where the activities of a number of persons acting under impulses such as actuate or inspire a mob were concerned. Though each stage may not have a logical relevance to the stage that follows it, it is often easier to understand a stage in such activities or to appreciate its grounds or origins as well as the probable course to its unfolding or future tendencies only when its full background or history has been seen and understood.

43. As to the principle enunciated in *Sheo Swarup* v. *King-Emperor* (1934) 36 Bom. L.R. 1185, it should be remembered that that was a case of a trial of several accused persons charged with murder and other offences and that the Sessions Judge who tried the case with Assessors had found the accused not guilty of any offence charged against them and acquitted them all. The Sessions Judge had formed a clearly expressed opinion that the evidence against the accused was wholly unworthy of belief ; and at the hearing before the High Court it was contended on behalf of the accused appellants that on an appeal from an order of acquittal on a matter of fact it was not open to the appellate Court to interfere with the findings of fact by the trial Judge unless it could be said that those findings could not have been reached by him had it not been for some perversity or incompetence on his part. The High Court declined to accept this view, holding that no condition was imposed on it in such an appeal. Accordingly, they reviewed all the evidence in the case and having formed an opinion of its weight and reliability different from that of the trial Judge they acted upon that opinion and convicted the appellants. This view of the law was endorsed by their Lordships of the Privy Council after a careful examination of Sections 404, 410, 417, 418, 422 and 423 of the Criminal Procedure Code. They came to the conclusion that there is no indication in the Code of any limitation or restriction on the High Court in the exercise of its power as an appeallate tribunal and that Sections 417, 418 and 423 of the Criminal Procedure Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded and to reach a conclusion that upon that evidence the order of acquittal should be reversed.

44. As to the burning of Shivagangawa and Basangouda the arguments advanced by Mr. Desai which are common to both the incidents are the following :—

(1) When the Police Sub-Inspector arrived at the village and when the *panchnama* was made only one heap of fire was found, though both the *panch* and the Sub-Inspector said in the Sessions Court that there were two heaps besides the stack of Nagappa.

(2) The Sub-Inspector has admitted that he found no evidence that fodder had been brought from the compouud of the Local Board school ; the evidence on this point, therefore, is a later addition.

(3) The evidence as to the burnings was artificially created : (*a*) by putting charcoal on the top of the burning heap as noticed by the Sub-Inspector ; (*b*) by throwing foreign matter on the heap as shown by the finding of smooth pebbles and a small conch shell in the remnants of the fire,—things which were unlikely to have been in the yard where the fires are alleged to have taken place ; and (*c*) by getting some bones from elsewhere and throwing them into the burning heap.

(4) The first account of the witnesses was that Shivagangawa and Basangouda were thrown into or on to the burning stack of Nagappa, and it was a later improvement to say that on their being so thrown they rolled down and they were pushed near the fire and that fodder was brought from the school compound and heaped on them, and also that wood fuel was subsequently added.

(5) The prosecution has not satisfactorily proved that human bodies can be burnt in the way alleged. According to Gangappa (Exhibit 67), a prosecution witness, the bodies could not be burnt in that manner.

(6) The Anatomist's evidence as to the bones shows that there must have been 3 skulls. If so, it conflicts violently with the psrosecution case.

(7) Assuming that there was a certain amount of strained feelings between the parties, it is not reasonable to suppose that the accused should go the length of getting hold of two human beings and burn them in broad daylight. It was not a case of any person or body of persons running amuck. Nothing is alleged to have happened before 12 o'clock to indicate that any such attempt was going be made, there being no evidence or allegation of any plot having been conceived beforehand. The immediate cause of the trouble is alleged to have been the use of abusive words by Shivagangawa but that was a common event and could not have led to such serious consequences. There was no past record of any acts of physical violence on the part of any of the accused. All that they had done before was to lodge two complaints for physical violence on the part of Shivagangawa and Bashetti.

(8) There were at least 1,000 people in the village and some disinterested evidence should have been procurable. The offence took place in broad daylight, and fields and threshing floors were within reasonable distances from the scenes of offences. It should have been possible, after the Sub-Inspector appeared in the village, for people to get rid of their fear of the Gojnurs and come forward to give evidence.

(9) Basangouda is not alleged to have done anything on the day in question. It is, therefore, not possible to understand the cause of the fury of the accused in breaking into his house, beating him seriously and then burning him to death.

45. As regards point (1). On the question of the existence of one heap or two heaps the *panchnama* Exhibit 82 gives no assistance. It speaks of " the place where the dead body was burnt ". The use of the singular in the expression " dead body " is not material, as immediately before the passage referred to, there is a reference to two murders having taken place in the village. The *panchnama*, therefore, refers to the place where the bodies were burnt and says that that place was at a distance of 32 paces from the road and that it was apart from the stack of fodder which was also burnt. The Sub-Inspector has clearly stated that he saw two small heaps at a distance of about 2 to 3 feet from the stack and that as the fire was still burning he directed water to be poured to extinguish it completely. About 10 or 12 jars of water were accordingly poured on the fire and it was extinguished. Thereafter the Sub-Inspector left the place, after keeping a watch of armed Police Constables there. He has further stated that as his first concern was to get the fire extinguished he did not pay any attention to the possibility of the two heaps becoming amalgamated as the result of water being poured thereon. The *panch* Nilkanthappa, however, has stated that when the *panchnama* was made, i.e., in the morning, one burnt stack and two heaps were found ; and the question arises, how, if the heaps had become amalgamated owing to the pouring of water, he could see two heaps. It may be that the heaps had become almost amalgamated or the *panch* may be importing his subsequent knowledge into his statement. The *panchnama* does not support the theory that there was throughout one heap, and it seems to us difficult to disbelieve the Sub-Inspector when he says that he saw one burnt stack and two burning heaps near it. The Sub-Inspector did not state to the Committing Magistrate that there were two heaps in addition to the burning stack. We do not, however, think that it can be said that there was originally one stack which has been magnified in the evidence into two.

(2) The Sub-Inspector has admitted that no witness told him anything about the stack of fodder in the school compound. This may well have been the case, his attention not being prominently drawn to this point. It is certain that at least one heap was found besides Nagappa's stack which was also burnt. Some fodder must, therefore, have been brought from somewhere outside the yard in which Nagappa's stack had been kept. We see nothing improbable in a village that fodder belonging to somebody should have been stored in a compound or plot not used for a school at the time : there is evidence that the school was being held elsewhere. It is difficult to disbelieve all the evidence on this point, though there are omissions on this point in the statements made by the witnesses to the Police and to the Committing Magistrate, probably because no questions were asked on the point. Dyama, in his statement recorded under Section 164 on the 29th March 1942, distinctly said that after Basangouda was thrown into the Kumbar's stack " he attempted to get out of this fire, then at this Bharmappa Gojnur (accused No. 12) struck him with a stick and again dry fodder was thrown over him and also some fuel was thrown thereon ". The evidence, therefore, with regard to the addition of fodder and other fuel cannot be regarded as an improvement.

(3) (*a*) The Sub-Inspector has stated that he found charcoal on the top on the heap on fire and that the charcoal was taken out from the heap and was not sifted out of the ashes. We do not think that the Sub-Inspector's evidence can be regarded *prima facie* as indicating or showing fabrication. It is probable that the finding of charcoal on the top of the heap was due to the pouring of water to extinguish the fire, the other pieces of charcoal having been burnt into ashes. The *panchnama* says that not only pieces of charcoal, but pieces of unburnt wood were found on the heap.

(*b*) It is true that some smooth pebbles and one small conch shell was found in the remnants of the fire, and there is evidence that the yard in which the alleged burnings took place is at a height of several feet from the adjoining road and that during the monsoon the rain water flows along that road. There is also evidence that the cremation ground of the village is in a *nalla* where ordinarily pebbles and conches would be found. It is the suggestion of the defence that the bones were collected from the cremation ground and that along with them certain pebbles and the small conch were brought and thrown on the burning heap. The Sub-Inspector, however, has stated that the soil of the yard in question is not black soil and that conches are sometimes to be found in " ordinary fields ", i.e., those which are not of black soil. It is not improbable that the owner of the yard may have added earth from the adjoining road or *nalla* to fill up pits caused by erosion during the monsoon and that thus pebbles and a conch shell had got mixed up with the soil. There is evidence that the road to Balagnur Railway station, which is to the immediate south of the field where Nagappa's stack had been kept becomes a *nalla* during the monsoon.

We do not, therefore, think that the presence of the pebbles and the conch shell is an indication that the fire or fires in which the two persons are alleged to have been burnt were interfered with in order to create evidence.

(c) The bones were sent to the Anatomist Dr. Mandlik. He found no bones like the pelvic bones. In the Sessions Court the Public Prosecutor argued that most of the big bones which were left after the burning of the bodies might have been removed by the accused. The defence has relied on the fact that there had been recent cremations in the village, at least three persons having died in the previous month or two, namely, Yamna Hakki's wife, one Balappa who had died on the 3rd February 1942 and one Badigar Manappa who had died in January or February 1942. I have already mentioned the number and the kind of bones which Dr. Mandlik found in the remnants of the fires which were sent to him for examination. It is difficult to say whether any of the big bones, if they happened to be in any portions of the burning pyres where the fire was intense, could not be burnt out. Gangappa, who gives evidence as to the mode in which a deceased Hindu is ordinarily cremated, says that after such cremation some bones are usually left, enough to fill an earthern jar 1½ feet wide, some about a span in length ; and he further says that the pieces of bones so left crumble to powder if pressed with fingers : " this is the result the body and the bones are completely burnt ". Dr. Mandlik was put no question as to whether more bones should have been found. It is hardly likely that small bones like pieces of cervical vertebra could have been picked up from the cremation ground and put into burning pyres. Gangappa's evidence is that on third day after cremation the relations of the deceased usually go to collect bones. It is unlikely that in the case of persons like those mentioned who had been recently cremated their relations should have left large bones like jaw bones and other pieces of the skull behind. It seems also improbable that such bones could have been collected in broad daylight on the 21st March or in the few hours of the night before the Sub-Inspector arrived at the village. In our opinion the bones produced in this case could not have been brought there from elsewhere ; and that being our conclusion, it provides strong corroboration of the prosecution story that both Shivagangawa and Basangouda were burnt to death.

(4) I have already pointed out that the story of fodder and other fuel being added to the fires was not a later invention as the statement of Dyama under Section 164 and the *panchnama*, Exhibit 82, show. Channaya has related in his examination-in-chief how he saw a woman being seized by the arms, legs and head and flung against the burning stack, her striking against the burning stack and falling down by its side and fodder being put on her and its catching fire. This story is repeated also by Pampanna, Dyama and others. No serious contradiction has been brought out with regard to this part of the depositions of these witnesses by reference to what they stated to the Police Sub-Inspector. It seems to us, therefore, that it cannot be said that there was an improvement in the description how Shivagangawa and Basangouda came to be burnt to death.

(5) With regard to the contention that the prosecution has not satisfactorily proved that human bodies could be burnt in the way alleged, we have the evidence of the witnesses Gangappa (Exhibit 67) and Dr. Mandlik (Exhibit 77). Gangappa gives the following description of the manner in which a dead body is usually cremated among Hindus :—

> " We pile fuel wood up to the height of 4 feet and upon that pile the body is placed, and upon the body the fuel is piled as high as below the body. The pyre is about 3 feet by 5 feet in long and broad. Big logs of wood are used for the pyre. We have to pour oil over the pyre. For at least 2 hours the skull does not burn and after that period it bursts and then it is known that it has burnt. After the burst of the head the people who have gone for cremation wait there for about 2 hours and by this time the entire pyre is red cinders and then the pyre collapses and sinks. At this stage it is felt that the body would be burnt and the mourners return. On the third day we go there to collect bones..... If a cart-load or two of fodder are stacked on a human body placed on the ground the body would not burn. The body would not be burned even if a cart-load or two even of fuel wood are added on that fodder and then burnt, the body will not be burnt. In order to burn the body, the body must be between two piles of fuel wood as stated above."

Dr. Mandlik said in cross-examination :—

> " If a body is placed on the ground and then it is covered by fodder one or two cart-loads and then again that is covered by one or two cart-loads of fuel wood, the body should burn. All depends upon the amount of fire and heat reaching the body."

Gangappa has no experience of the burning of human bodies except in the orthodox manner followed at cremations. The reason why at ordinary cremations the dead body is first placed over a pile of fuel seems to be that a draught of air must be created below the body and that the fire below the body ensures that it is completely burnt. The basis of Dr. Mandlik's opinion appears to be that if sufficient heat is generated even on three sides of the body, it may be sufficient to penetrate and burn up every part of the body. We are not prepared to hold that the prosecution has not produced all the evidence which it was possible to get on this point, or that a reasonable doubt is left that the bodies in question could not be burnt in in the circumstances alleged by the prosecution. Dr. Mandlik's opinion was given in answer to a hypothetical question put by the defence, which took the responsibility of showing that the burning of the body in the manner alleged was impossible. The question put to him was, therefore, based on what, according to the defence, was the prosecution case. It was, therefore, not open to the defence to contend, as was contended before us by Mr. Desai, that Dr. Mandlik's opinion was not sufficient to show that the bodies in question could be burnt in the manner alleged by the prosecution. The defence could have put a more precise question in any other form to Dr. Mandlik ; and we have no hesitation in preferring his opinion to that of the witness Gangappa. There is evidence that the fires went on burning for several hours, and the Sub-Inspector says that when he arrived at the village at 2 a.m. there were still live cinders of fire. It is not improbable that the two bodies, including most of the bones, had been burnt up by that time. There is, therefore, in our opinion, no such improbability in the prosecution story on this point that it

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must be rejected. It was for the defence to show that the bodies could not have been burnt in the manner suggested. Nagappa's stack, it would seem, was originally burnt with the object of throwing the victims on the stack or into the fire. The original dimentions of the stack appear to have been 16 feet by 6 feet, with a height of 12 feet. On being burnt, this stack would naturally shrink in height. Bharmagouda son of Basangouda has stated : " The stack had been burnt and shrunk when I went to Adiveppa's house." This, in all probability, is the reason why it was set on fire before Shivagangawa was brought there and why the two victims were swung before being thrown on to the fire. In neither case did the victims actually land on the top of the burning stack. The said victim rolled down and he or she had to be pushed towards the fire and then fodder had to be brought and then heaped on her or him.

(6) Mr. Desai argued that as the Anatomist, Dr. Mandlik, found three petrous bones belonging to the base of the skull, two belonging to the right side and one to the left, they might well have formed parts of three skulls. All that Dr. Mandlik could be certain about was that the bones were from more than one human bodies. To argue that the accused are entitled to the benefit of the possibility that there might have been three skulls is, in our judgment, to ask the Court to stretch the probabilities unduly in the accused's favour. As I pointed out to the learned Counsel, Dr. Mandlik found at least nine bones which could be identified as human bones. They might belong to any number of human beings more than one, and not more than nine. The mere possibility, for instance, that they were bones belonging to nine persons cannot obviously suffice to invalidate the prosecution case. Such possibility is not the same as a reasonable possibility, in the case of which alone its incompatibility with the prosecution case would be entitled to consideration.

(7) The prosecution case is not that there was a common intention from the beginning to murder or burn alive anybody or even to disgrace Shivagangawa, but that the incidents were a manifestation of mob psychology and mob violence, wherein one incident would lead to another without any fresh provocation the fury of the mob feeding on its own excitement, so that comparatively small beginnings might lead to grave consequences, and when considered in the cold light of reason afterwards the sequence of events might even not appear capable of rational explanation. It has to be remembered that behind the events in question there was a background of strained feelings between the Gojnurs and the families of Shivagangawa and the Goudars due to an anti-Gojnur application to the Mamlatdar, the prosecution of Shivagangawa and her son, the burning of the stacks of both parties (which was bound to create strong suspicions against the enemies of the party concerned) and Shivagangawa's offensive tongue, often directed against the females of the Gojnurs. This night well have created a feeling of the utmost irritation and exasperation which burst out in savage acts, the immediate provocation being provided by (*a*) the quarrel with accused No. 34 by Ningangouda, the brother of the Police Patil, beginning with an offensive reference to the Gojnurs sarcastically imputing acts of incendiarism to them and ending with the slapping of accused No. 34, (*b*) Shivagangawa's abuse of the Gojnurs and later, (*c*) when a threat was given that the house in which she was would be burnt, her challenge ; " If you are men, do what you like with me " in such circumstances it would not be possible to predict what course the anger and exasperation aroused among the Gojnurs would take, but one could be certain that all their past grievances against their enemies would be vividly brought back to their minds and an intense desire would be aroused to pay off old scores, real or fancied.

(8) People would be terrified by the events of this description and would try to avoid getting involved in the quarrels of the two powerful parties, not only with the object of avoiding their animosities but also of avoiding the trouble of being a witness in a murder case. It is also probable that most people of the village had shut themselves in as soon as they found that things were taking an ugly turn—there is some evidence on this point—and that, therefore, not many were eye witnesses to the incidents in question. Narayan Pujar says that he stayed indoors for one hour before leaving the village, and both the Police Patil and Ningangouda shut themselves in their houses.

(9) It is not difficult to see why the fury of the mob after Shivagangwa had been done to death should have turned towards Basangouda. In the criminal case against Shivagangawa, Basangouda had not only stood surety for her but had helped her in her defence. This would link them together in the minds of the Gojnurs and, some of the accused have not hesitated to say that there was illicit relationship between the two. Bharmagouda, son of Basangouda, says that when some of the accused came in front of Basangouda's house he heard them say, " Why are you siding with a woman, and why are you hiding like a woman ?" As Basangouda was a man who had shown his independence to the Gojnurs, the latter would be afraid that he might be a source of danger to them, specially after Shivagangawa had been killed. There is evidence that some of the accused actually expressed such fear ; and it is to be remembered that when Bhimappa and Nilkanthgouda went to accused No. 10 seeking his intervention in the attack on Basangouda's house, accused No. 10 wanted Nilkanthgouda's guarantee that Basangouda would take no steps in the matter of the burning of Shivagangawa.

In our opinion, the main arguments relied on on behalf of the accused to show that the alleged burning alive of Shivagangawa and Basangouda was an improbability cannot be accepted. I shall next deal with the oral evidence regarding those incidents. The witnesses who depose to the burning alive of Shivagangawa are Channaya, Chanbasangouda, Pampanna and Irappa. In our opinion, the last three witnesses are unreliable, or at least their evidence is not such that it can be safely acted upon (see paragraph 56 below). Channaya mentions accused Nos. 31, 18, 36, 42, 20, 6, 26, 19, 7 and 8, as the persons who held Shivagangawa before she was flung on to the fire. There is no corroboration as to the complicity of those accused persons. Yamnayya says that he learnt, whilst sitting in the *chavadi* that Ningapps's stack had been set on fire and that Shivagangawa had been thrown into it. Kalkangouda and Mukdappa both say that Channaya came to the latter's shop and said that he had seen a naked woman thrown into a burning stack near the school and burnt. In our opinion, the evidence is sufficient to establish that Shivagangawa was burnt to death, but that no accused can be held guilty of the act.

The following have claimed to be eye witnesses of the burning alive of Basangouda : Chanbasangouda, Pampanna, Dyama, Bharmagouda son of Basangouda, Virupaxgouda and Mahadev. Of these witnesses Chanbasangouda, Pampanna, Virupaxgouda and Mahadev appear to be unreliable witnesses ; at least it would be unsafe to act on their evidence (see paragraph 56 below). We have also held that Dyama and Bharmagouda, son of Basangouda, are essentially reliable witnesses. Bharmagouda says that he saw his father's body being burnt, but does not mention any accused as having taken part in the burning. Dyama mentions accused Nos. 12, 13, 14, 15, 36, 38, 39, 50, 29 and 37 as having held Basangouda before throwing him on to the fire. There is no corroboration of this, and Dyama did not mention those accused persons in his statement to the Police or in his statement recorded under section 164, Criminal Procedure Code. It seems to us that the evidence is sufficient to establish that Basangouda was burnt to death, but is insufficient to show that any accused was guilty of the said act.

46. The next important point taken by Mr. Desai was that the evidence as to the accused's attack on the front door of Basangouda's house and their having broken open two doors in that house was unreliable and in all probability fabricated. The witnesses on this point are Bashetteppa, Ningappa, Bhimappa, Bharmagouda, Parwatevva, Amarappa and Nilkanthgouda. There is also the *panchnama* regarding the state of the house as seen by the *panchas* on the morning of the 22nd March. The *panchnama* (Exhibit 80), after mentioning that on both sides of the front door there are *kattas*, that there is a passage between the *kattas*, that in half of the Vappatti in the left corner cotton has been stored, and that in the right hand corner there is a room filled with cotton, says :

> " In front of the room, there is a side *padsala* of *6 khans*. There is a *padsala* East-West of 5 *khans*. In the said *padsala* there is a door. From that door one enters the cooking room of 3 *khans*. Beyond it there is the back door to the South. The door is of one shutter. There are marks on that door as if caused by a substance like a pointed iron bar while forcing the door open.....The upper portion of the cotton in the corner of the passage and the side *padsala* are burnt. "

Police Sub-Inspector Karajigi has stated that shortly after his arrival at the village he saw that the back door of the house was broken, and that the house was in a disturbed condition. Bashetteppa says that before leaving the village he went through Basangouda's house between 3 and 3-30 p.m., and he described what he found thus :—

> " One of the two wooden shutters of the kitchen was found there also. An iron bar was also there in the kitchen. Article 4(a big iron rod) before the Court is the same. A plank of the door of the backyard was lying near the threshhold of the kitchen. Articles 1, 2, 3 and 5 (three wooden cross bars of the back door, one wooden door of three planks, a broken wooden latch or cross bar of the back door and a shutter of the middle door) before the Court are the same. "

47. The prosecution case is that the assailants sought to force or break open the front door of the house using an iron bar (Article 4) which is a heavy bar 5 feet long with one end flatened to a blunt edge, but that they did not succeed in the attempt. Next they attempted to break open the back door, which consisted of three planks joined together side by side with nails and further secured by three cross bars each placed horizontally across the three planks, with three large nails going through the two planks, the ends of the nails being bent on the inner side of the door, the whole doorshutting on a door frame and one of the planks, 9 inches broad, ending in two projections, one wooden and the other of iron, which served as hinges on which the door turned in sockets. On the inner side the door used to be closed with a wooden latch or cross bar going into holes in the walls on the two sides of the door. The prosecution case as sought to be made out before us by the learned advocate General, is that pressure was put against the door and that with the help of the iron bar (Article 4), or more than one bars, the cross planks were seperated and the wooden latch or cross bar broken ; that attempts were being made, whilst these operations were in progress, with the help of the big iron bar to lift the door out of the socket in the floor ; and that in this way, after the cross planks had been separated and about the same time as the cross bar at the back cracked, the door was bodily lifted and thrown out of the door frame. The planks have some nails still embedded into the sides, some broken and some bent, and the ends of some nails which held the cross planks being broken. The wooden latch or cross bar was found in a broken condition by the *panchas*. There are marks on the top of one of the cross planks, and the two projecting hinges were intact. The prosecution case further is that the room at the back, namely the kitchen, was entered after the back door had been broken down, and that there after an attempt was made to force open the door between the kitchen and the front room. The method adopted in forcing that door was to insert the big iron rod between the shutters, which opened into the kitchen, and by pulling one of the shutters, which was fastened by a chain on the side of the front room, to break that chain and the hook to which it was attached. The chain was found by the *panchas* lying on the floor, one of the links as well as the hook being broken. There are marks on the inner side, that is, the side of the front room, on the top of the shutter to which the chain was attached.

With regard to the front door the learned Judge has remarked that Article 4 would be used with enormous force and that it would leave marks of violence on the front door ; but that the *panchnama* does not show any such marks ; and also that the door frame would be loosened from the wall and the wall would be damaged by the blows dealt on the door. The *panchnama*, however, states that the front door was pushed by an iron bar and that " there are marks here and there " ; also that a wooden piece of about one cubit had gone off the inner portion of the door frame. That wooden piece or chip is article No. 6. It was not noticed by the learned Judge at all. The notes of inspection made by the Committing Magistrate show that the front door had dents " evidently made with the strokes of a crow-bar. " It seems to us, therefore, that there are sufficient indications that an assault of some force was made on the front door.

As to the back door the contentions advanced by Mr. Desai were as follows :—

(1) Article 4 could not have been inserted between the cross planks and the planks of the door and there are not enough marks to indicate such insertion.

(2) The hinges on the back door are intact, and that being so, the plank with the hinges or projections could not have fallen out of the foor frame.

(3) There were nails holding the planks together, and it is, therefore, difficult to imagine how if the door was within the door frame they could be separated. Most of the nails in the planks are sticking out straight, a few of them being curved. Nearly all of them would become curved if the cross planks were separated in the manner alleged.

(4) It is difficult to imagine how the cross bar or latch was broken. If it was broken there was no need of removing the door, or one of the planks, out of the hinge-sockets or out of the door frame, and there was no need of separating the other two planks of the door.

48. There is evidence that not only the iron bar (Article 4) was used but also other bars. Parvetawwa says that 6 or 7 persons were trying to break open the doors by means of small bars. Amarappa speaks of " iron bars " with which the front door and the back door were attacked, and he says that accused No. 25 had an iron pounding bar. Bharmagouda, son of Basangouda, also speaks of accused No. 25 having an iron pounding bar with him. The inspection notes of the Committing Magistrate states that at his inspection, which was made in the presence of the parties and their advocates, all that he was shown by the parties was that the shutters of the kitchen door and the middle door had been damaged. Mr. Desai has relied on the following passages in the evidence of Parvatewa and Amarappa :—

" Our back door was broken and its cross bars were lying in the backyard and planks of the back door were in the kitchen." (Parvatewwa).

" The planks of the back door fell into the kitchen." (Amarappa).

He has asked how it was possible for the three planks to fall into the kitchen, specially the plank with the hinges. The *panchnama* does not say, however, that the planks were lying in the kitchen. All that it says on the point is :—

" Beyond it (the kitchen) there is the back door to the South outside the kitchen). The door is of one shutter."

It does not appear to us to be improbable that not only the cross planks were separated from the planks of the door and that the cross bar or latch at the back of the door cracked or was broken, but that the door itself was lifted out of the door frame. The attackers would be pushing against the door from outside, and there is evidence that those inside tried to keep the door in position by pushing it from the other side. An attempt was made throughout to separate the cross planks from the door, but when that was effected the pressure from outside could crack the cross bar behind the door, though the assailants might not be aware that the said bar had cracked. A further push might have resulted in throwing open the door, but instead of doing that the assailants might have gone on trying to lift the door out of its sockets by means of the big iron bar ; they appear ultimately to have succeeded in doing so and in throwing the whole door down into the kitchen. In the absence of detailed evidence as to how the attack was directed against the back door, it does not seem improbable that something like the procedure described above was adopted by those who tried to break it open.

49. With regard to the middle door, the main criticism is based on the following statements made by Amarappa :—

" When the iron bar was inserted in between the two shutters a gap was made of about a span."

" The middle door did not open when there was a space of one span made between the two shutters."

It is contended that if a gap of one span was created between the two shutters, the door to which the chain was not attached would fly open and there would be no need to break the chain and the hook. This argument, like the argument regarding the back door having been lifted out of its sockets, is new and does not appear to have been advanced in the Sessions Court. No other witness has deposed to this gap of one span. The chain, besides, by which the door was shut was not long enough to allow such a big gap. This is shown by the length of the chain in Court, there being nothing to show that there was one more link to it. The chain was seen by us, and it consists of three links, and it seemed to us that when this chain was put on its hook the door to which it was attached would be somewhat tightly pressed against the door frame. This is further shown by Amarappa's statement that the two shutters came together as soon as the iron bar was taken out, and that this process was repeated several times. The method used by the assailants was thus described by Amarappa :—

" Accused No. 27 then inserted the big iron bar article No. 4 in between the space of two shutters of the door and some of the others pulled one of the shutter and top hinge broke and it came down ; the chain on the door also gave way (broke)."

The shutter that was pulled by some people was the one in Court (the one to which the chain was attached). In my opinion, one span might be the length of the space measured vertically where the two shutters separated, e.g., from the top, and after such a gap was created some of the accused took hold of the shutter which held the chain by inserting their fingers in the gap and gave it a hard pull, so that both the chain and the hook broke. Mr. Desai, however, has argued that the construction more favourable to the accused should be put on Amarappa's evidence, namely, that a gap measuring a span was created horizontally between the two shutters, so that one of them would fly open, a possibility showing the unreliability of the statements of the witnesses who depose to the attack on the middle door. It seems to us, however, that the evidence of Amarappa, who is by no means an unintelligent person, must be read as a whole, and that we should not be justified in putting a construction on a statement made by him which would make nonsense of his further statement that after the gap was created one of the shutters had still to be pulled so strongly that both the chain attached to it and the hook above it broke. Such an interpretation would also be in obvious conflict with the fact that the chain was not long enough to allow the space of a span measured horizontally to be created between the two shutters. We think, therefore, that there was nothing improbable in the middle door of Basangouda's house having been broken in the manner alleged. We are satisfied that the evidence regarding the attack on the middle door sufficiently

shows that it was opened in the manner alleged. Unlike the attack on the backdoor the attempt to force open the middle door was seen by two witnesses who were inside the kitchen at the time, namely, Amarappa and Bharmagouda, son of Basangouda, and they have both stated that some of the accused after entering the kitchen tried to force open the middle door and succeeded in doing so. We believe their evidence on this point; and that being so, that is, if there was an attack on the middle door, that conclusion would support the evidence as to the backdoor having been broken open. The attackers could come to the middle door only after breaking open the backdoor.

50. We do not think that it was possible, within the limited time available, to damage the back-door and the middle door to the extent they were found damaged when the Sub-Inspector arrived at the village. Nor was it necessary to do this in order to show that Basangouda ultimately came out of his house, was beaten, and was carried away. For the evidence could have been that he came out of the house on being threatened that his house would be set on fire as in the case of the house in which Shivagangawa had taken shelter (one witness indeed says that such a threat was given); and there is, besides, the evidence that Basangouda came out on being told that a compromise would be effected. The elaborate process of damaging the door would be required (if the prosecution case in this respect were false) only for the purpose of saddling the accused, or some of them, with further liability for house-breaking, a hypothesis which would be consistent only with the theory that the people at the back of the prosecution were not content with preparing a case of rioting, hurt, outraging the modesty of a woman, abduction with intent to murder and murder against the accused.

51. In the result, we are of opinion that the story that an attack was made on Basangouda's house and that the back and middle doors of that house were broken open, is not an improbable story. On the contrary, there is ample evidence, both oral and that of the *panchnama* regarding the condition of the three doors of the house, that such an attack was made on the 21st of March 1942. The witnesses on this point are Bashetti, Ningangouda, Irappa, Chanbasangouda (regarding the taking away of the big iron rod from one of the Gojnurs' houses), Nilawa, Bhimappa, Nilkanthgouda, Bharmagouda son of Basangouda, Parvatewa and Amarappa. There is, besides, the *panchnama*, Exhibit 80. In our opinion, Irappa, Chanbasangouda and Nilkanthgouda are unreliable witnesses (*see* paragraph 56 below), but the remaining witnesses are essentially reliable. We hold that the evidence of the latter witnesses establishes that the house of Basangouda was attacked, that the front and the backdoors were battered, that the latter was broken down, that several accused entered the house, that some cotton which was lying inside was set on fire, and that the middle door was opened in the manner alleged; also that the house-breaking was committed in order to abduct Basangouda with the object of beating him and possibly also of murdering him.

Bhashetti says that he heard the doors of Basangouda's house broken open and also heard Basangouda's entreaties and that people were saying that they had burnt the woman and that they would also burn him. Ningangouda, who deposes to having seen certain matters through a chink in his door and to have heard and recognised certain accused persons, says that he heard accused Nos. 14 and 39 abuse Basangouda and ask him to come out, that he recognized them by their voices, that accused No. 14 asked for an iron bar to be brought and accused No. 48 brought such a bar, and that accused Nos. 35, 38 and 48 said that they would go to the backdoor. He also has stated in his cross-examination that he recognised by their voices accused Nos. 9, 10, 12, 13, 17, 25, 26, 27, 29, 48 and 49, adding that he also saw them through the chink. It seems to us that his evidence as to those 11 accused persons, as to accused Nos. 14's and 39's having abused and called out Basangouda and as to accused No. 14's having asked for the iron bar should not be acted upon, as normally it would not be easy to recognize so many people by their voices. Nilava says that she heard people shouting to Basangouda to come out and that she heard accused No. 37 saying, "We have finished with the woman and we shall now attend to the fate of the man". She also heard accused No. 10 saying that it would be harmful to leave Basangouda. Bhimappa says that he saw the front door attempted to be forced open, that accused Nos. 2, 8, 13, 18, 19, 20, 22, 24, 43 and 47 forced open the backdoor, and that accused No. 13 struck Nilakanthgouda with a stick when the latter went to interfere. Bharamagouda says that he heard the voices of 13 accused persons, whom he names, at the front door. As he was inside the house, we do not think it safe to rely on his evidence against those 13 persons. He did not mention four of them (accused Nos. 10, 36, 38 and 48) to the Police. He also says that accused Nos. 2, 8, 14, 16, 18, 19, 21, 24, 25, 40 and 47 entered the kitchen from the backdoor. He did not mention accused Nos. 24, 25, 40 and 47 before the Committing Magistrate. Parvatewa says in her cross-examination that accused No. 14, 15, 39 and 40 attempted to open the front door. Amarappa says that accused No. 11 told accused No. 15 to bring chillies, that some people tried to open the front door, and that accused Nos. 2, 8, 21, 22, 25, 26, 27, 32, 46 and 47 came in by the backdoor. He did not mention to the Police that accused No. 11 told accused No. 15 to bring chillies.

52. We would apply certain principles in assessing the value of the evidence set out above. First, we would eliminate entirely from our consideration the evidence of a witness whom we have held (in paragraph 56 below) to be unreliable or on whose evidence, in our opinion, it would not be safe to act. Secondly, we would eliminate from the evidence of a witness any accused person mentioned by him in the Sessions Court as concerned in any criminal act if such person has not been mentioned by the said witness before the Police or the Committing Magistrate or, where his statement has been recorded under Section 164, Criminal Procedure Code, in such statement. Thirdly, the evidence of a single witness against any accused person in respect of any criminal act should not, in our opinion, suffice to implicate him in a case of this nature; we would hold such act proved against him if at least two of the witnesses whom we regard as essentially reliable have involved him therein. These principles we shall apply also in assessing the evidence as to the other incidents to be discussed later. Applying these principles to the evidence on the point under consideration, we find that accused Nos. 2, 8, 14, 18, 19, 21, 22 and 47 are all guilty under Section 454, read with Section 149 of the Indian Penal Code. There is sufficient

evidence that they formed an unlawful assembly with the object of forcibly breaking into Basangouda's house, that they, inspired with this object, were all present when the house-breaking was committed, and that such house-breaking was committed with the object of beating Basangounda and possibly of abducting him from his house in order to burn him to death. He was beaten immediately after he came out of the house, and *prima facie* the persons concerned in breaking into the house with so much labour, intended to commit some criminal act. That they also intended to mete out the same treatment to Basangouda as had been meted out to Shivagangawa would appear from Bashetti's evidence that he heard it said that they had burnt the woman and that they would also burn him; and from Nilawa's evidence that she heard accused No. 37 saying that they had finished with the woman and would attend to the fate of the man, and that she also heard accused No. 10 saying that it would be harmful to leave Basangouda.

53. There is no sufficient evidence against any accused as to the alleged burning of cotton inside Basangouda's house, which would constitute offences under Sections 435 and 436 of the Indian Penal Code.

54. Mr. Desai has next contended that the first information given by Dyamangouda to the Police Patil at Gadag (Exhibit 66) is a very suspicious document. According to the evidence Narayan gave the information to Dyamangouda at Hombal, which is at a distance of 9 miles from Kadadi, and Dyamangouda conveyed the information to the Police Sub-Inspector at Gadag, which is at a distance of 6 or 7 miles from Hombal. Mr. Desai has contended that this was a suspicious method of conveying information to the Police. Before the Police Sub-Inspector Narayan appears to have stated that he thought of going to Hombal when he left Kadadi. In the Sessions Court he stated that his original idea was to go to Gadag, but that after walking three miles he thought of going to Dyamangouda who lived at Hombal. It has been contended on behalf of the defence that he could very well have left Kadadi by train which leaves the village at about 6 or 6-30 p.m. and arrived at Hombal at 7 or 7-30 p.m. The time when he actually did arrive there, and that he must have left Kadadi later than when he says he did and travelled by train rather than walked a distance of 9 miles, specially when he was fasting on that day. If that were so, it is contended that he must have known at least the first of the two burnings, if it took place, and that the absence of any mention of any burnings in the first information shows that the burnings were later inventions. It is further contended that the suspicious manner in which the Police were informed shows that Narayan, who was not personally interested in the affair, did not leave Kadadi on his own initiative, that he must have been sent by the enemies of the Gojnurs at a time when the details of the story which was to be presented to the Police on their arrival had not been worked out, and that this accounts for the vague nature of the information recorded by the Police Sub-Inspector.

55. We do not think the story of either Narayan or Dyamangouda is improbable. Leaving by train would mean some previous waiting at Palagnur Station, the railway station nearest to Kadadi (the distance is 2 miles), with the risk of some of the accused coming to know of his mission. Witness Kalkangouda says that he was followed by accused Nos. 36, 42 and 43 as he and Channayya went up to the station. If Narayan was fasting and had sustained a sprain on the way, as he says he did, his taking about 6 hours in walking 9 miles is not improbable, nor does the period of 4 hours taken by Dyamangouda in walking a distance of 7 miles up to Gadag in the dark appear *prima facie* suspicious or excessive. It seems to us, therefore, that there is nothing so suspicious about the first information as to cast reasonable doubt on the prosecution case.

56. This would appear to be a convenient place for examining the credibility of the different witnesses for the prosecution. I shall take them in the order in which they were examined,

Bashetteppa, Exhibit 9.

He was examined by the Police on the 22nd March and there is a *panchnama* as well as a medical certificate regarding the injuries sustained by him. It is clear, therefore, that he was present at some fight which took place on the day in question. His credibility is attacked mainly on the ground that his story regarding the journey which he says he made to Garwad appears to be improbable. It is contended that if he was so severely injured that he was unable to speak to the Police Patil of Garwad, it is improbable that he would be able to walk up to Garwad, a distance of about three furlongs. Sangangouda, Police Patel of Garwad, has said that he found Bashetti and Irappa at Nilawa's house but that when questioned Bashetti was unable to speak. There is some discrepancy in the accounts given by Bashetti, Irappa and Sangangouda as to what took place at Garwad. Irappa has stated that Sangangouda came to them and asked them why they were there, whereupon he told the Police Patel what had happend, that thereafter the Police Patel put them in somebody's house and locked them in, that they went next morning to Hadagali and that Mahadevappa, Police Constable, took them from there to Kadadi on the morning of the 22nd March. Irappa omitted to mention to the Police a major portion of this account. Sangangouda says that he found Bashetti and Irappa at Nilawa's house, that Bashetti could not speak, that Irappa told him that Bashetti had been beaten and Shivagangawa and Basangouda had been burnt alive by Gojnur party people and that the next morning, at about 6 or 7 a.m., Bashetti and Irappa left Hadagali. This witness did not tell the Police what according to him he had been told by Irappa. Bashetti's account is to the effect that he and Irappa were locked by some person in a house, that he does not know that the Police Patel came there, that the next morning he went to Hadagali and that the Police Constable Mahadevappa took them from there to Kadadi. The discrepancies in the above three statements can be explained by holding the whole story to be false, with the result that Bashetti has to be regarded as an unreliable witness, or by supposing that the accounts given by Irappa and Sangouda, or at least one of them, is not correct. There are important discrepancies between what both Irappa and Sangangouda stated in the Sessions Court and what they stated to the Police, the discrepancies in the case of Sangangouda being the more serious of the two. Irappa might conceivably not have mentioned to the Police what took place at Garwad. But if Sangangouda had learnt from Irappa that Bashetappa had

been beaten and that Shivagangawa and Basangouda had been burnt alive, there was no reason at all for him not to mention that to the Police. In our opinion the discrepancies do not necessarily show that Bashetti's account is not the correct one. Certain discrepancies between what he stated in Court and his statements to the Police have been brought to our notice, but they do not appear to be material. We regard this witness as essentially a reliable witness.

Ningangouda, Exhibit 15.

He was examined by the Police on the 22nd March. He also sustained injuries and there is a *panchnama* and a medical certificate regarding them. There can be no doubt that he was present when stones were thrown from the compound of accused No. 28 and that he was also beaten with sticks. He had a contused wound and a contusion and five weal marks. As to his statement that he stood on the verandah of Kashappa, it has been contended that he need not have stood there and could have run away. It is further contended that the injuries on his person, numbering eight, are not such as could have been inflicted by eight or ten persons who, according to him, beat him with sticks for four or five minutes. He says that after he was beaten accused No. 10 said, " He is dead ". It is contended that the injuries were not so severe as to lead anybody to think that he was dead. Kashappa's house was next to the compound of Dod-Bharamgouda and was sheltered from the compound from which stones had been thrown by a wall. That place might well have been selected by Ningangouda as a place of comparative safety and he might have thought that any attempt to go to his house might result in his meeting some of the accused and getting severely beaten by them, though it is true that his taking shelter in Kashappa's house did not ultimately save him. The fact that when he went to the dispensary on the 23rd March only five weal marks were found on his person cannot necessarily mean that he received only five blows from sticks. All beatings would not leave weal marks, and about 30 hours had elapsed since the time of the beating when he arrived at the dispensary at Gadag. As the result of the beating he might have lain so motionless as to lead accused No. 12 to remark that he was dead.

It is further contended that the statement made by him that within 15 minutes of his slapping accused No. 34 people came to the backyard of accused No. 28 cannot be true, the time being insufficient for all the accused to collect in the said backyard. It is, however, to be noted that in this statement Ningangouda has not said that all the 51 accused came within the period of 15 minutes but that " people came ". Some of the accused may have arrived at the backyard of accused No. 28 within 15 minutes and thereafter other accused persons might have come. There is some other evidence to the effect that the accused collected in the abovementioned backyard in about half an hour's time after the altercation between accused No. 34 and Ningangouda. It was the end of the harvest season and many of the villagers would be in their threshing floors which were near the village site. It has further been pointed out that whereas he said in Court that accused Nos. 29, 17, 48, 49, 25, 27, 26 and 10 threw stones, he omitted to mention accused Nos. 10 and 17 to the Police. This omission would certainly go in favour of the particular accused but cannot in our opinion seriously detract from the credibility of this witness. On the whole we are satisfied that Ningangouda is substantially a reliable witness.

Irappa, Exhibit 18.

He was examined by the Police on the 22nd March. It was strenuously argued with regard to this witness that he could not have seen the burning of Shivagangawa from the place where, according to his statement to the Police, he said he stood, viz., in front of Basappa Saraf's house. The name of accused No. 19 is Basappa Saraf and the front door of accused No. 19's house opens towards the east. If one stood there, it was not possible to see Nagappa's stack. The prosecution case was that by Basappa Saraf's house the witness actually meant the house of Adiveppa Saraf, because Adiveppa's father's name is Basappa. It was contended by Mr. Desai, however, that as there is no evidence that Adiveppa's house was called Basappa Saraf's house, it could not be assumed in favour of the prosecution that the witness meant that he stood not in front of the house of accused No. 19 but elsewhere. The map shows that if he stood in front, i.e., to the west of Adiveppa Saraf's house, he could clearly see Nagappa's stack. One argument in favour of the interpretation put by the prosecution on the witness's statement was that he said in his statement to the Police that he passed through Kembannavar Lane and stood in front of Basappa Saraf's house; and it is contended that " passing through " implies coming to the end of the lane, the only house at the end of Kembannavar Lane being Adiveppa Saraf's house. On the whole, however, we think it unsafe to rely on the evidence of this witness. He is a boy of 15 or 16 years and he says that he stood at seven different places, from six of which he saw different incidents, nearly all that took place on that day. Besides, on referring to the statements made by him to the Police which have been brought on record, we find that he has been guilty of several important omissions in that statement regarding matters which he would not have refrained from mentioning to the Police if he had actually seen them. For instance, he did not tell the Police that accused No. 17 removed Shivagangawa's waistband and that accused No. 48 removed her *sari*. He did not state that ten persons held her before she was thrown into the fire, or that accused No. 10 walked up and down the street in front of Ramalinga temple saying that Shivagangawa had been made naked and any person who wanted to see her might come and see her, or that accused No. 9 kicked Shivagangawa on the back and stood on her body, saying that if any one wanted to rescue her he could do so. He is, besides, the only witness who has said that he saw a stick inserted in the woman's private parts. This statement he did not make to the Police. On these grounds we do not think it safe to rely on the evidence of this witness.

Bharmawwa, Exhibit 9.

She is the mother of Hulgur Sakarappa and she was examined by the Police on 23rd March. The Judge made this remark at the end of her deposition :-

> " The witness does not impress me as one with normal intelligence and she could not hear the questions put to her in a normal tone. She used to lapse into a vacant attitude on occasions. She is below normal intelligence."

She admitted that she could not see the persons in the dock and said that she could not identify persons at a distance of 20 feet from her, as her eye-sight had become dim after her recent illness. Her evidence is that she saw accused Nos. 15, 16, 17, 13, 22, 48 and 38 catching Shivagangawa and dragging her to the road. She also says that she saw accused No. 17 remove her waistband and accused No. 48 remove her *sari*. She would see these incidents from a distance much less than 20 feet, and in our opinion the mere fact that her eye-sight is dim and that she appeared to the Judge to be below normal intelligence is not sufficient to show that she is an unreliable witness. Some of her statements made to the Police have been brought on record but they do not show any important discrepancies. We are inclined to hold that on the whole she is a reliable witness.

Yamnappa, Exhibit 20.

He is a Walikar of Kadadi village, and he was examined by the Police on the 23rd March. His credibility is assailed on the following grounds: (1) he did not say to the Police (what he has stated in Court) (*a*) that Ningappa sat on a *charpoy* in front of the verandah of accused No. 9, (*b*) that he sat on the *katta* of the *neem* tree in the *chavdi*, and (*c*) that he saw Shivagangawa being brought from the direction of Gojnurs' houses; (2) he did not see Chanbasangouda sitting on the *charpoy* with Ningappa; (3) he took no action to inform the Police and he did not inform the Police Patel of the incidents that he had seen till late in the evening on the 21st March. On this last point there is some discrepancy in the evidence of this witness and the Police Patel. According to the Police Patel he told Yamnappa to go and inform the Police, but the witness said that a watch had been kept on the roads and there was danger to his life. The Police Patel, however, said nothing on this point to the Police. Yamnappa says nothing regarding a watch having been kept on the roads or his having informed the Police Patel about it. He explains his delay in going to the Police Patel by saying that he heard that people were prevented from going to the Police Patel and that on hearing this he became afraid and stayed in the *chavdi*. It seems to us that probably both the Police Patel and this witness were so afraid that they took no steps at all and that they are now trying to explain their inactivity. The learned Advocate-General has pointed out that this witness has some leanings towards the Gojnurs, as he admits that he has been borrowing money for the last seven years from accused No. 10, and though he mentioned several accused to the Committing Magistrate, viz., accused Nos. 16, 12, 15, 10, 14, 11, 9, 28, 39, 37 and 29, he mentioned only three accused, Nos. 9, 10 and 48, in the Sessions Court. It seems to us, therefore, that on the whole what the witness does say against the accused is reliable. The fact that Ningappa sat on a *charpoy* may not have struck him as an important fact when he was examined by the Police, nor may he have thought it necessary to tell the Police that he sat on the *katta* of the *neem* tree. As to his omission to state to the Police that he saw Shivagangawa being brought from the direction of Gojnurs' houses, if the discrepancy is as to the direction from which he saw Shivagangawa being brought, (that appears to be the case) that is not, in our opinion, a material discrepancy. If he sat on the verandah of accused No. 9 which faces the west and Chanbasangouda and Ningappa sat on a *charpoy* to the north of the same house, he may easily not have noticed Chanbasangouda, though he says, wrongly in our opinion, that Ningappa's *charpoy* was in front of the western verandah of the house. On the whole we are unable to regard Yamnappa as an unreliable witness.

Channayya, Exhibit 22.

He is a tailor living at Gadag and was sent for by the Police on the 24th March and examined on the 26th March. Both the learned Judge and Mr. Desai have denounced him and his father-in-law as false witnesses. It may be noted at the outset in his favour that no contradiction between his evidence and the statement he made to the Police has been made out, and the same remark applies to Kalkangouda also. The contentions urged against the credibility of this witness are as follows. (1) When Kalkangouda went to a *nalla* to the south-east of Kadadi to answer a call of nature, the witness went up to Nilamma's temple, from where he saw smoke issuing from the burning stack of Nagappa. There was no necessity for him to go to the temple. He could have waited at Mudkappa's shop, that being the place where, according to Kalkangouda, he (Kalkangouda) would ordinarily go for a cup of tea according to his habit on his way to Balagnur Station. Besides, Channayya admits that Mudkappa was the only person he knew at Kadadi. (2) If he knew Mudkappa only, it is difficult to understand how he could identify as many as ten accused (Nos. 31, 26, 18, 8, 36, 42, 6, 7, 20 and 19) as the persons who held Shivagangawa before flinging her on to the fire. (3) He admits that neither he nor his father-in-law had any business at Kadadi, and there is some evidence that there is another, a shorter, route from Garwad to Balagnur Station. Kalkangouda admitted in the Committing Magistrate's Court that he had no work at Kadadi, though in the Sessions Court he said that he had to recover certain dues from his sister living at Kadadi, and he got hopelessly involved in prevarications on that account. (4) He says that he left his village Garwad at 1 p.m. That was too early an hour, the time when the train was to leave Balagnur Station being 6 or 6-30 p.m. and the distance between the Garwad and Balagnur Station being less than three miles. (5) There are certain contradictions between what he said at the trial and the statements he made to the Committing Magistrate: (*a*) in the Sessions Court he said, "I saw a woman lying on her left side;" while before the Committing Magistrate he said that she lay on her back and again that he saw the woman stripped of her clothes seated; (*b*) in the Sessions Court he said that fodder was brought from the school compound, while in the Committing Magistrate's Court he said fodder was brought from "some place"; (*c*) at the trial he said that he had taken his wife to Gadag 2 or 3 times, while to the Committing Magistrate he said, "I had not taken my wife to Gadag during the last 8 or 9 years": (*d*) he said to the Committing Magistrate that he stood at a distance of 8 or 9 feet from Nagappa's stack while at the trial he gave the distance as 32 to 40 feet. (6) He did not inform the Police of what he had seen after he had reached Gadag.

To take these contentions in order. (1) If he knew that his father-in-law would go to Mudkappa's shop, there seems nothing very improbable in his walking up to Nilamma's temple. The distance from

the point where he would have to take a turn to go to Mudkappa's shop up to the temple is very short. (2) His not knowing the accused whom he identified would not necessarily prevent him from identifying hem. The learned Judge has noted that he took 13 minutes to identify the 10 accused persons. This night well have been due to the lapse of about 15 months since the date of the offence. At the identification parade he identified all the 10 accused except accused No. 36. (3) and (4) Kalkangouda has stated that n such occasions he used to take tea at Mudkappa's shop. This would be a sort of outing for him in the ourse of which he would probably not only have his tea but collect gossip at Mudkappa's shop, after hich he would walk up to the station in good time for the train. There is no clear evidence regarding e alleged other route. In any case, according to Kalkangouda this was the route usually taken by him d his son-in-law. (5) As regards the witness not taking his wife to Gadag previously, in all probability e earlier statement of Channayya is true. That would not prevent Channayya, however, from coming his father-in-law's place at Garwad in previous years. His wife's present age is 16 years and e has been married to him for 9 or 10 years. With regard to the position in which he found hivagangawa, the witness showed to the Court a position to which either of the descriptions would apply. Iis failure to inform the Police at Gadag might be due to his desire not to get involved in a criminal case of his nature. Mudkappa has stated that both Channayya and Kalkangouda came to his shop and so far as e corroborates the evidence of both these witnesses. We see nothing improbable in Channayya's having ft Garwad on the day in question and gone to Kadadi and seeing the burning of Shivagangawa.

Chanbasangouda, Exhibit 24.

He was examined on the 24th March. There are important omissions in his statement to the Police as compared with his deposition in Court. For instance, he did not state to the Police that accused Nos. 10 and 6 went to the stack of Nagappa and set fire to it, nor did he mention either of these two accused in his statement recorded under Section 164. He did not tell the Police that he saw ten persons holding Shivagangawa before she was flung on to the fire or that he saw Basangouda similarly held by ten persons. He did not tell the Police anything about the incident in which accused Nos. 12 and 25 came to Ningappa Gojnur's house and asked for an iron bar and later accused No. 15 was brought and the iron bar procured. Nor did he tell the Police that he saw a rope put round the thighs of Basangouda and Basangouda being dragged by that rope. He stated in Court that when the accused went towards Basangouda's house, two accused persons, viz., accused Nos. 10 and 50, were left near the fire in which Shivagangawa had been burnt ; but to the Police he made no mention of accused No. 50. It also seems to us improbable that this witness sat quietly watching the two burnings sitting at the same place the whole time. We feel that it would be unsafe to act on his evidence.

Dyama Kindri, Exhibit 26.

He was examined by the Police on the 24th March. It is alleged against him that he is a farm labourer earning four or five annas a day, that he has a younger brother who is a cowherd and who took out the cattle of others for grazing. Yet, according to this witness, he took out on the day in question his own she-goat and calf for grazing to a place which is not the usual place of their grazing, viz. Bastihalla, the usual grazing place being Hirehalla near his house. He is, besides, the only witness who has stated that Basangouda was being carried on the shoulders of some persons. As against his statement in Court that he had taken out his she-goat and calf for grazing, he stated to the Police that he had taken out a he-goat without mentioning any calf. Further he has admitted that he worked as a farm servant of Basangouda sometimes. We do not think that he has told an improbable story. He has stated that he had been taking the two animals in question for the previous four or five days to Bastihalla, and in his statement recorded under Section 164, Criminal Procedure Code, on the 29th March he said that he had taken out a calf and a goat, the Kanarese version showing that he mentioned a she-goat. The Kanarese version, again, of his statement as to his having worked as a farm servant of Basangouda shows that he stated that he had worked for Basangouda for a day or two. We do not think that the discrepancies mentioned above are material. In his statement to the Police, he did not say that he saw Chanbasangouda sitting with Ningappa Gojnur and he did not mention any of the ten accused who are named as the persons who held Basangouda by arms, legs and head before he was flung on to the fire. The first omission does not appear to be material, as he might not have thought that he was required to state which of the other witnesses he had seen. The second omission would certainly operate in favour of the specific accused persons in question, but does not appear in our opinion to be such as to discredit this witness. On the whole, therefore, Dyama appears to be a reliable witness,

Pampanna, Exhibit 28.

He was examined by the Police on the 26th March. He was a clerk of accused No. 10 from 1928 to 1940. He was again appointed by one of the Gojnurs and then dismissed, a fact admitted by the Police Patel but not admitted by the witness. After giving evidence for one and a half days he suddenly left the Court on the 30th of June and absconded. He had to be arrested in Ramdurg State and brought to the Court where he was next examined on the 30th of June 1943. He explains his disappearance by saying that he saw accused No. 10, who was sitting in Court, staring at him and he adds that the father of one of the Gojnurs who is a pleader told him that he would see how he lived in the village. Nilkanthgouda, who is said by the defence to be at the bottom of the prosecution case, admits that he sent a telegram to Ishwargouda at Gadag asking him not to pay any money to Pampanna "as he had run away". The defence has strenuously contended that the telegram shows that the witness was being paid for giving evidence. In our opinion this possibility is not excluded beyond reasonable doubt, though Nilkanthgouda has given an explanation of the telegram. As to his disappearance from Court the defence suggestion is that he disappeared because he had not been paid. That does not seem to us to be probable, as on the

date of his disappearance he had already given some evidence ; he was not at a difficult stage of the cross-examination and has not done worse than other prosecution witnesses in cross-examination. But on the whole we think that it would not be safe to rely on the evidence of this witness.

Nilawa, Exhibit 29.

She was examined by the Police on the 23rd March. The Judge held that she could not have been at Kadadi on the 21st March, but the Police Sub-Inspector says that he saw her at 3-30 a.m. on the 22nd March and this clearly shows that the learned Judge was wrong in his conclusion. She has mentioned accused No. 15 among others as one of the persons who beat Bashetti with sticks and also in some other connection. But before the Police she did not mention accused No. 15. On other points there is nothing important in the statements made by her to the Police and brought on the record. Nothing particular is alleged against her credibility by Mr. Desai or Mr. Chundrigar. We hold her to be a reliable witness.

Bhimappa, Exhibit 30.

He was examined by the Police on the 22nd March. The contentions urged against this witness's credibility are as follows. (1) He had gone to work on the day in question as a coolie in the fields : it was unlikely for him to return by noon. (2) He had sold his house to accused No. 10 owing to his debts and was living in another's house. He could not, therefore, have been " intimate with accused No. 9 ", as he says. (3) He sought the intervention of accused Nos. 9 and 10 three times during the day. Not being a man of substance it is hardly likely that he would do so. He has admitted that he did not think of rescuing Ningangouda or collecting people in the village as he is a poor man and none would come at his instance. (4) He specifically mentioned before the Police 19 accused as present in accused No. 28's backyard, 10 accused as present at the backyard of Basangouda's house and 21 accused as present at Hulgur Sakrappa's house. In the Sessions Court he stated that all the 51 accused were present on those occasions. (5) Before the Committing Magistrate he stated that when Bashetti was beaten and thrown down in front of the yard of Dundappa there was no one else but himself and the assaulters ; he should have seen Nilawa and Sangamma who fell on Bashetti. (6) He first said that among the persons who pulled Ningangouda by the legs were accused Nos. 12, 13, 15, 16, 14, 25, 27, 21 and 17. Out of these he did not mention accused No. 17 to the Police, and he himself stated in cross-examination that accused No. 12 alone pulled Ningangouda by the legs. The other contradictions and omissions in his statement made to the Police are not important. To take these points in order. (1) He is not an ordinary coolie, but is a man related to the Goudars and there is nothing improbable in his returning to his house at midday. It was the end of the harvesting season. (2) As he used to have dealings with accused No. 10 it is not improbable that he maintained good relations with accused No. 9. (3) We see nothing improbable in his seeking intervention of accused Nos. 9 and 10. This would be different from his seeking the help of the villagers terrified by the actions of the Gojnurs. (4) It seems that in the Police statement he added the words " and others " to the different accused persons specifically named by him. There is, therefore, no contradiction. (5) The witness seems to have left the place where Bashetti was beaten before Nilawa and Sangamma came and fell on Bashetti. In his examination he has stated, " All the accused were there when Bashetti was beaten. I then went to the house of accused No. 9 to request him to stop such things and restore peace." He might not, therefore, have seen Nilawa or Sangamma. (6) In his first statement he appears to have loosely included all the accused as present ; and his own correction of his earlier statement in his cross-examination should be accepted. On the whole we do not think that anything of a serious nature has been brought against the credibility of this witness.

Bharmagouda son of Basangouda, Exhibit 32.

He was the first witness to be examined by the Police Sub-Inspector on the 22nd March. The following points are urged against him. (1) He said to the Police that Shivagangawa and Basangouda had been " beaten, killed and burnt ", implying that they had been murdered before they were burnt, and to the Committing Magistrate he said that hearing that his father had been burnt with Shivgangawa he felt distressed. (2) The fact that he went out of his house a second time when he saw his father's body being burnt was not specifically mentioned to the Police. That journey was not also mentioned to the Police by Parvatewa, Amarappa and Nilawa. (3) He says that he stood in the middle of the road near Hulgur Sakrappa's house and saw his father's body burnt. According to the Judge, Nagappa's stack was not visible from that place. His inspection notes on this point are : " Standing at the extreme end of the road in front of Adiveppa Saraf's house one can see a little more portion of the abovesaid backyard (the backyard in which Nagappa's stack had been kept). 14½ feet from the door of Adiveppa Saraf's house and 6½ feet from the verandah one cannot see anything of the backyard." With regard to the first point, the witness might at first have got the impression that his father had been killed before he was thrown into the fire. He, of course, has no direct knowledge regarding the burning of Shivagangawa. Nilkanthgouda, at one place in his evidence, has stated that after Banangouda was beaten accused Nos. 10, 11, 12 and 18 said that everything was over with him and that he should be taken to the burning stack and burnt there. The expression " burnt with Shivagangawa " in his statement made in the Committing Magistrate's Court appears to be a loose expression and does not necessarily mean that the two persons were put together at the same time into the fire or were burnt together. With regard to his omission to mention to the Police that he left his house a second time when he saw his father's body being burnt, we find that he did state to the Police that he saw it being burnt. The absence of any specific mention, therefore, in his statement to the Police of his second journey is not of much consequence. With regard to the third point, the map in the learned Magistrate's record, which was prepared by the Municipal Surveyor at Gadag on a scale of 40 feet to an inch, clearly shows that if one were to stand about the middle of the road in front of Adiveppa's house he would be able to see Nagappa's

stack, at least partilly. We do not think that the expression "middle of the road" must be taken literally and on that account the witness's evidence disbelieved. On the whole this witness appears to be an essentially reliable witness.

Parvatewa, Exhibit 35.

She was examined on the 22nd March. She is related to accused Nos. 12, 13 and 16, their mother being the daughter of the witness's mother's sister. No point was specifically taken by Mr. Desai and Mr. Chundrigar against her credibility. The learned Judge, however, has found four grounds for disbelieving her testimony. (1) that she could not have been in her house on the day in question and she ought to have been in the fields, that being the harvest season; (2) that she should have told Virupaxgouda Kudleppa and Yamnurappa, who paid her a condolence visit, to report the offence to the Police; (3) that she did not mention to the Police Bharamgouda's going out of the house a second time; and (4) that she did not see the iron bar article 4. We do not think that her stay in her house was improbable. It was the end of the harvest season, and she has stated that 10 to 16 coolies had gone to her fields to pick cotton and that she had sent the children to supervise the operations. Her omission to request Virupaxgouda and others to report the matter to the Police can very well be understood in view of the terrified condition of her mind when she would not want further trouble. The omission to speak about Bharamgouda's going out of the house on the occasion on which he saw his father's body being burnt is not an important detail from the point of view of her own evidence. She did not go to the back door of Basangouda's house and during the earlier part of the attack on the house she was inside Nilkanthgouda's house. It is not improbable that she failed to see article No. 4. The omission would rather suggest that she is not a tutored witness. We are inclined to accept her evidence as reliable.

Amarappa, Exhibit 38.

He was examined on the 22nd March. Mostly minor omissions have been brought out in his statement made to the Police. Nothing has been urged against his credibility except that he belongs to Basangouda's family. Regarding him the learned Judge has stated, "It is difficult to accept his word when he says that he saw accused No. 27 inserting article 4, an iron bar, in the back door as he was inside and accused No. 27 in the outside and there was no means of seeing accused No. 27". The learned Judge has fallen into an error, as what the witness was deposing to concerned the attack made on the middle door which the witness was certainly in a position to see. We think this is also an essentially reliable witness.

Nilkanthgouda, Exhibit 40.

He was examined by the Police on the 22nd March. He was Police Patil of the village from 1926 to 1935 and was dismissed after an inquiry regarding his work, a large number of charges having been drawn up. One of the charges was that he had torn up a *panchnama*. He first admitted it and later said that the Gojnurs had torn the *panchnama*. The Mamlatdar who took part in the inquiry was of opinion that he was "an unscrupulous and consummate lier and absolutely unreliable". The District Deputy Collector held that the main charges against him were substantiated and that he was unfit to be entrusted with the duties of a Police Patel. He was accordingly removed from his post "for gross and habitual neglect of duty". In the inquiry against him accused Nos. 9, 10, 15, 18, 19, 31, 39, 49 and 50 gave evidence against him. He has deposed against the largest number of accused persons. He mentions 9 accused, whom he named, as having attempted to break the front door of Basangouda, but he did not give those names to the Committing Magistrate. He also mentions 14 accused, including accused Nos. 15 and 21, as concerned in the breaking of the back door. In the Committing Magistrate's Court he omitted to mention accused Nos. 15 and 21 in this connection. We feel that it would not be safe to rely on the testimony of this witness, as he would be likely, even if he was an eye-witness to some of the incidents, to add the names of innocent persons to those of the people whom he might have seen committing the criminal acts in question.

Mudkappa, Exhibit 47.

He was examined on the 23rd March. A passage in the statement made by him to the Police has been the subject of good deal of controversy. The defence has read that statement as meaning that "Kalkangouda's son-in-law (Channaya) said to Kalkangouda and me about Basangouda having been burnt", a statement which, it is pointed out, is in flagrant contradiction to the evidence of Channaya who has deposed to his having seen only the burning of Shivagangawa. The prosecution version of the said statement is: "I spoke to Kalkangouda and his son-in-law about Basangouda having been burnt". Both the constructions involve an amendment of the actual passage as taken down in Kanarese. In case of such a doubt it cannot be said that the defence has satisfactorily established any contradiction. Except for this passage there in no important contradiction or omission apparent from his statement made to the Police. The other points urged against him are (1) that he had only 12 cups and saucers in his shop while he says that he served all the 51 accused in his shop, (2) that there was a Chapter case against him 12 years ago, and (3) that he denied that his sister was accused No. 37's mistress. We do not think these points are important or material. In our opinion Mudkappa is essentially a reliable witness. He has corroborated the evidence of a number of witnesses on different points, viz., Chanayya, Ningangouda, Parvetawa, Nilkanthagouda, Kalkangouda, Chanbasangouda and Nilawa.

Kashappa, Exhibit 48.

He was examined on the 23rd March. He is the elder brother of accused Nos. 1 and 35. He has made a statement that Ningangouda and Basangouda's son Dod-Bharamagouda beat accused No. 34. No other witness has mentioned this Basangouda. He has also stated that on the evening of the date of the offence he was called by accused No. 10 and told to leave the village and to take the names of Basangouda and Bashetti as the persons who had been burnt. He did not make this statement in the Committing Magistrate's Court. In the Sessions Court he mentioned accused Nos. 14, 15, 17, 38, 46 and 51 as the persons who told him to accompany them for lodging a complaint of dacoity against the persons who were inside his house. Before the Committing Magistrate, however, he said that he could not say who were the persons who had come infront of his house after Ningangouda had been beaten. In cross-examination, however, he said, " I do not remember if I did not mention the names of accused Nos. 15, 51 amd 38 as the persons who had asked me to file a complain tbefore the Committing Magistrate ". This passage suggests that the question put to him was that he had not mentioned accused Nos, 15, 51 and 38 to the Committing Magistrate. The learned Judge has noted that those names are not in the record of the Committing Magistrate. It is, therefore, not clear whether he mentioned the other three names, viz., accused Nos. 14, 17 and 46 ; *prima facie* it would appear that those three names were mentioned to the Committing Magistrate. The discrepancy, therefore, would be only as to the other three accused, Nos. 15, 51 and 38 ; and in any case the matter is unimportant because the incident in question does not involve any offence.

This witness should really have a bias in favour of the accused, being the elder brother of accused Nos. 1 and 35. The allegation that those two accused were first told to give evidence for the prosecution and that on their declining to do so they were made accused is not borne out by the statements of those accused, though other accused persons have made similar allegations. Nothing important has been urged against the credibility of this witness by Mr, Desai or Mr. Chundrigar. We think that on the whole he is a reliable witness.

Irrappa, Exhibit 72.

He is the son of Nilawa, a boy of seven. This witness needs no special consideration as his evidence comes to very little.

Narayanappa Pujar, Exhibit 63.

He was examined by the Police on the 28th March. It is contended that he must have gone to Hombal by train, leaving the village at 5 or 5-30 p.m., the train leaving Balagnur station at 6 or 6-30 p.m., and that if so, he should have mentioned all the main incidents, or the main incidents omitted in the first information could not have taken place. I shall deal with these points in commenting on the argument that the document containing the first information is a suspicious docunent. There is some evidence that people at Kadadi sometimes do not avail themselves of the train. For instance, Kalkangouda says that when he was examined by the Magistrate at Gadag on the 29th March he had gone there on foot from Kadadi. He is one of the signatories to Exhibit 14, an application made to the Mamlatdar on the 20th of February 1942 to the effect that the Gojnurs were obstructing the people of the village from using a public tank. This does not *prima facie* show any real animus, as the signatories may have genuinely believed that they were entitled to the use of the water, while the Gojnurs were asserting that it was their private tank. Whether it was a private tank or not, the Gojnurs would not like such an application having been made against them, but it cannot be inferred that the signatories were actuated by ill-feeling against them in making the application. The same remark would apply also to the other witnesses who signed the application, viz., Chanbasangouda, Ningangouda and Bashetti. This witness did not see much of the incidents of the day and in our opinion his going out on foot to give information to the Police was not improbable.

Dyamanagouda of Hombal, Exhibit 65.

Nothing has been urged against this witness and he merely proves the first information. The evidence shows that Narayan Pujar came to him with the information and he took it to the Police Sub-Inspector at Gadag. The learned Judge has considered it suspicious that he did not enquire of Narayan which Bharamgouda and which Basangouda (names mentioned in the report) were meant and that he did not make any inquiries regarding the injuries sustained by those persons. Dyamangouda has explained that Narayan did not stay at his house but went away directly to a relation at Gudadur three miles away, and that he, therefore, had no time to make any such inquiries. It seems that he thought that the names mentioned by Narayan were his own relations bearing those names as otherwise Narayan would not have taken the trouble to come all the way to him and give him the information.

Gangappa (goldsmith), Exhibit 67.

He gives evidence on two points, (1) as to his having prepared beads for Shivagangawwa ten years ago and as to the identity of two pieces out of article 22 found in ths house of accused No. 48, and (2) as to the method of cremation of Hindus. His evidence on the first point is not conclusive as he says that he must have made 40 or 50 such articles for others and would not be able to say for which woman he prepared any particular piece if all those pieces were put together and shown to him. I have already dealt with the second point.

Virupaxagouda, Police Patil of Hadagali, Exhibit 68.

He was examined on the 26th March. The curious thing about this witness is that he identified 12 accused persons and another who is not an accused person in the parades held by the Police in August 1942, but mentioned none of them in Court while he mentioned four other accused persons in Court,

viz., accused Nos. 4, 6, 10 and 15 though he did not identify any of those four in the parades, at which they were present. He said, for the first time in the Sessions Court, that when he went to the burning stack accused No. 4, who was present, volunteered to him that one of the heaps was the one on which Shivagangawa had been burnt and the other the one on which Basangouda had been burnt. He had not made this interesting statement either to the Committing Magistrate or to the Police. In the Sessions Court he first stated that only he and two others, Kudlappa and Yemnurappa, started for Kadadi from his village. But he had said to the Police that he had taken a party of 16 boys with him. He later had to admit in the Sessions Court that he had mentioned his 16 companions to the Police. He said that he informed Mahadevappa, Police Constable, of what he had seen on the previous day. To the Committing Magistrate, however, he said that he told no Policeman anything before his examination by the Police Sub-Inspector on the 26th March. We think on the whole that it would not be safe to rely on this witness's evidence.

Sangangouda, Police Patil of Garwad, Exhibit 73.

He was examined by the Police on the 24th March. He did not tell the Police that Irappa had told him that Gojnur party people had beaten Bashetti or that Shivagangawa and Basangouda had been burnt by them or that people were in search of Bashetti. If Irappa had actually told him these matters, practically the only matters on which he would be expected to make his statement to the Police, his silence as to them certainly makes the testimony of this witness very suspicious. We cannot regard him as a reliable witness.

Mahadevappa, Exhibit 92.

He was examined by the Police on the 23rd March. He is a coolie earning four annas a day and he seems to be a thoroughly bad character. He adds picturesque touches in his evidence, for instance that he saw people leaving Kadadi with bundles on their heads, that accused No. 4 asked him if he had come to see (the burnings) and he assented, also that accused No. 14 told him, "Oh Mahadeva, you had your New Year celebrations some time back, you look at ours." He was convicted of theft and housebreaking and he is a dismissed village servant. There was a chapter case against him and he was kept on the Police surveilance register. We think that he is an unreliable witness.

Bharamagouda, Police Patil, Exhibit 93.

He was examined on the 22nd March. He is the only witness who has specifically mentioned 31 accused persons as having collected in the backyard of accused No. 28. He sent no report to the Police and did nothing before the arrival of the Police Sub-Inspector to communicate with the authorities, nor did he make any inquiries regarding the offences that had been committed. His explanation is that he was ill, so that even when the Police Sub-Inspector came he could not leave his bed. The medical certificate regarding the injuries found on him shows that he had three injuries on the head, one contused wound, one contusion and one abrasion, and he attended the Gadag dispensary from the 23rd to the 26th March. He must, therefore, have been present in the backyard of Dod-Bharamgouda where he was struck with stones. He has given no evidence about the subsequent events. His statement that certain accused persons, whom he has named, were present in the backyard of accused No. 28 has not been contradicted by any other evidence, except in so far as the statements of most other witnesses that all the accused were there can be said to be a contradiction. He seems to have kept indoors and taken no action on account of his fear of the Gojnurs and probably partially also owing to illness. So far as he has deposed to events within his personal knowledge he seems to be a reliable witness.

57. The result of the above examination is that we regard Irappa Doni, Chanbasangouda, Pampanna, Nilkanthgouda, Ira, son of Nilwa, Virupaxgounda, Mahadevappa and Sangangounda as unreliable witnesses or as witnesses on whose testimony it would not be safe to act, and that we regard the remaining witnesses as essentially reliable witnesses.

58. We next take up the examination of the evidence as to :

I. The incident of the accused collecting in the back-yard of accused No. 28, their throwing stones at persons assembled in the backyard of Dod-Bharamgouda and injuring certain persons.

The learned Judge has come to the conclusion that some sort of a fight took place in Dod Baramgouda's backyard and certain persons (Ningappa, Bashetti, Bharamgouda, the Police Patil, and Shivangouda, deceased) received injuries in that fight. Mr Desai has suggested that the parties on both sides, namely, those alleged by the prosecution to have been there and some persons belonging to Gojnurs' party, collected together for extinguishing the fire, and that somehow a fight or *fracas* ensued between them, with the result that the persons named above were injured ; alternatively he has suggested that the fight took place at a place outside Dod-Bharamgouda's backyard *e.g.*, in front of Hulgur Sakrappa's house. He has contended that there is no sufficient evidence to show satisfactorily (a) that all the accused or even a large number of them assembled at the backyard of accused No. 28, or (b) that any particular incident was the cause or occasion of their being called or their collecting at the said place. He has relied in this connection on the statements of Pampanna that "Basangouda's party people and the Gojnur party people had all joined in extinguishing the fire", and "there was stone throwing from both sides". He has pointed out that the accused could not have orginally come with any serious intention of injuring anybody, and that this would appear from the following statement of Dyama :—

> "The Officiating Patil Bharamgouda asked both parties not to fight and go back. He also asked those who were in Ramalinga temple to leave the place, and accused No. 9 also asked the persons in the yard of accused No. 29 also to go away."

The prosecution case is that :—

(1) There was an altercation between accused No. 34 and Ningangouda and accused No. 34 left for the Gojnur locality saying that he would bring his master or masters.

(2) Some time later—stated to be 15 minutes to half an hour—all the accused came and stood in accused No. 28's backyard which adjourns the backyard of Dod-Bharmagouda.

(3) There was an exchange of hot words between the accused and those in Dod-Bharmagouda's yard where stood the Police Patil, Bharmagouda, Dod-Bharmagouda, Ningangouda, Pampanna, Bashetti, Basangouda, Shivagangawa and others.

(4) Shivagangawa began to abuse the Gojnurs.

(5) The accused, or some of them, began to throw stones at the people at Dod-Bharmagouda's backyard.

(6) Certain persons were hit, including Dod-Bharmagouda and the Police Patil who fell on the ground.

60. The first of these incidents is composed of 3 or 4 elements :—

(*a*) Ningangouda saw accused No. 34 standing near the south eastern door of Dod-Bharmagouda's backyard. Ningangouda said : " These are the persons who start fire and who have come to extinguish it. "

(*b*) Accused No. 34 asked him, addressing him contemptuously in the second person singular, whom was speaking to or referring to.

(*c*) Ningangouda felt enraged and slapped accused No. 34.

(*d*) Accused No. 34 left saying that he would bring his master or masters.

61. With reference to this incident Mr. Desai has contended that this was not such a serious affair as to enable accused No. 34 (a farm labourer of the Gojnurs) to collect not only the 8 Gojnurs (accused Nos. 9 to 16) but 45 others and get them to come to accused No. 28's backyard within the short period of 15 to 30 minutes ; that the accused have not been shown to be so connected or related together that they would all come together ; that if, as the evidence shows, only accused Nos. 34 and 28 were there (Kashappa says that accused No. 28 told him to raise the alarm shortly after the outbreak of the fire), the words " these persons " used by Ningappa could refer to only those two persons ; or if it be supposed that more people of the Gojnur party were present (as Pampanna's evidence seems to indicate) the fight might well have between those people and the people in Dod-Bharmagouda's backyard, and the statements that all the accused assembled in accused No. 28's backyard, all armed with sticks, are a piece of superfluous embroidery ; and that the theory that Shivagangawa's abuses provoked the stone throwing is untenable in view of the fact that Shivagangawa was in the habit of abusuing the Gojnurs and could not have provided any new provocation.

62. It has to be remembered that there were strained relations between the Gojnurs and their partisans on the one hand and Shivagangawa and the Goudars on the other. There can also be little doubt that when Ningangouda said, " These people first set fire to stacks and then come to extinguish them ", he meant by the words " these people ", and was understood by accused No. 34 to mean, the Gojnurs and the people belonging to their party. If, therefore, after being slapped by Ningangouda accused No. 34 went to some of the Gojnurs saying that the Police Patil's brother had been accusing them of incindiarism and had further beaten him when he had protested against the allegation, there can be little doubt that Ningangouda's conduct would be regarded as highly provocative and offensive by the Gojnurs, and the determination to teach their enemies a lesson, or to take some steps in the matter immediately, may easily have been spread rapidly among the Gojnurs and their supporters or dependents. It has been pointed out that according to the Police Patil only the following accused worked for the Gojnurs, viz., accused Nos. 21, 27, 7, 34, 33, 1, 4, 47, 24, 29, 19, 17, 31, 25, 26, 23, 2, 35 and 40 in all 19 persons. Accused Nos. 9 to 16 are members of the Gojnur families and accused Nos. 28, 32, 37, 50 and 51 are said to be related to the Gojnurs. Accused No. 22 is a brother of accused No. 23, accused No. 8 is a brother of accused No. 47, and accused No. 18 is a brother of acused No. 19. It is not the prosecution case that only the Gojnur accused and those who worked for their families came to their help. The possibility, again, that some of the accused besides accused Nos. 28 and 34 had been engaged in extinguishing the fire does not conflict with the prosecution case that they later on assembled in the backyard of accused No. 28. It is possible that everyone of the accused did not assemble there. The Police Patil has not stated so (though those who gave evidence on this point say that all the accused stood there) and has specifically named in this connection accused Nos. 1, 3, 4, 7, 8, 9, 10, 13, 15, 16, 17, 21, 23, 24, 25, 27 to 31, 34, 37 to 39, 42 to 44, 46, 48, 49 and 51. I have already commented on how the other witnesses may have come to persuade themselves that all the accused assembled in the backyard of accused No. 28.

63. It is true that this was not the first occasion on which Shivagangawa abused the Gojnurs. It is also true that the Gojnurs are not shown to have resorted to any violent act against their enemies before, just as their enemies are not shown to have concocted a false case against them before. If, however, the Gojnurs and people of their party came to accused No. 28's backyard in a mode of exasperation or indignation due to what accused No. 34 had reported to them, it does not seem improbable that the abuses addressed to them by Shivagangawa on this occasion would lead them, or some of them, to attack those assembled in the backyard of Dod-Bharmagouda with stones.

64. The witnesses on this point are Bashetti, Ningangouda, Irappa Doni, Bharmava, Yamnappa, Chanbasangouda, Dyama, Bhimappa, Nilkhanthgouda, Kashappa, Narayan Kalkangouda and Bharmgouda, the Police Patil. There are, besides, *panchanamas* and medical certificates of injuries sustained by by different persons who were hit with stones. We have held that Irrappa, Chanbasangouda, Pampanna and Nilkanthgouda to be unreliable or to be witnesses whose evidence could not be safely acted upon. The evidence of the rest of the witnesses sufficiently shows, in our opinion, that there was a fire in

Basangouda's backyard, that it was extinguished mostly by the people of the Goudars' party, that the accused or a number of them assembled in the backyard of accused No. 28 after an altercation between accused No. 28 and Ningangouda, that there was an exchange of words between the two parties, that Shivagangawa abused the Gojnurs, that stones were thrown from the backyard of accused No. 28 at the people in Dod-Bharmagouda's backyard, and that the Police Patil Bharmagouda, Dod-Bharmagouda, Ningangouda, Shivagangawa (deceased) and Nilkanthgouda were hit by stones and sustained injuries. The persons who threw the stones must be held to be animated by the common intention of causing hurt to the persons who were in Dod-Bharmagouda's backyard. As to the injuries on the persons who were hit with stones, there is the evidence of Ningangouda, Bharmgouda, the Police Patil, Bharmava and the *panch* who saw the injuries on the morning of the 22nd March. The medical certificate shows that the injured persons were in all probability hit by stones. Nilkanthgouda did not go to the dispensary, and Ningangouda had some injuries which were probably caused by blows with sticks.

65. Bashetti says that accused Nos. 9 and 10 instigated others to throw stones and also threw stones themselves, and that Dod-Bharmagouda, and Bharmagouda the Police Patil, were hurt. Ningangouda says that accused Nos. 29, 17, 48, 49, 25, 27, 26 and 10 threw stones and that Dod-Bharmagouda, the Police Patil and he were hurt. This witness did not mention accused Nos. 10 and 17 to the Police. Bharmava gives no names of any accused and says that Dod-Bharmagouda and the Police Patil were hurt. Yamnappa also merely speaks of a fight and says that the Police Patil was hurt. Bhimappa says that Dod-Bharmagouda, the Police Patil and Ningangouda were hit, and that accused Nos. 10, 11, 12 and 13 instigated others to attack the people in the other backyard. Kashappa merely deposes to the stone throwing. Narayanappa says nothing specific against any accused. Bharmagouda, the Police Patil, has given the names of 31 accused persons as already stated, and no contradiction has been brought out as to any of those accused by reference to what he stated to the Police. Applying the principles already enunciated, we get the following resu ts: Accused Nos. 9, 10, 12, 13, 21, 25, 27, 29, 48 and 49 formed an unlawful assembly, the common object of the said assembly, being the causing of hurt to the people assembled in Dod-Bharmagouda's backyard; accused No. 10 incited others to throw stones at those people, stones were thrown accordingly, and several persons in the said backyard were thus injured. We must, accordingly, hold that offences under section 147 and section 323 read with section 149 of the Indian Penal Code are proved against each of the abovenamed accused.

66. II. The beating of Ningangouda.

The witnesses are Bashetti, Ningangouda, Bhimappa and Kashappa. There are, besides, the *panchnama* and medical certificate regarding the injuries caused. In our opinion all the four witnesses are reliable and their evidence establishes the fact that Ningangouda was beaten with stieks by several accused persons animated by the common intention of beating him.

67. Bashetti says that 25 accused persons came from the Muslim lane as he and Ningangouda stood on the verandah of Kashappa Asuti, and that accused No. 12 pulled Ningangouda down. He did not mention accused No. 12 in this connection to the Police Ningangouda says that the accused came from the Muslim lane, that accused No. 12 pulled him, that accused Nos. 17, 29, 39 and 48 came in front of him and 8 or 10 people hit him, and that accused No. 12 said, "He is dead". The witness did not mention accused No. 17 to the Police in connection with this incident. Bhimappa says that accused Nos. 12, 13, 14, 15, 16, 17, 21, 25 and 27 pulled Ningangouda by the legs. In cross-examination he corrected this statement by saying that accused No. 12 alone pulled him by the legs. He made a similar statement to the Police, wherein he omitted to mention accused Nos. 13, 14, 15, 16, 17, 21, 25 and 27. Kashappa says that accused No. 12 dragged Ningangouda, that accused Nos. 13, 15, 17, 38 and 51 beat him with the stones, that on the said information accused Nos. 4, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 25, 27, 28, 29, 39, 47 and 48 came to his house, and that after the assault accused No. 10 said, "Ningangouda is dead". This witness did not tell the Police that accused No. 12 dragged Ningangouda. Again applying the principles already enunciated, we get the following result:

Accused Nos. 12, 13, 14, 15, 16, 17, 21, 25, 27, 29, 39 and 48 are all guilty under section 147 and section 323 read with section 149, and accused No. 12 is also guilty under section 323 of the Indian Penal Code. We do not hold that the rioting comes under section 148, as there is little evidence of the size of the sticks used, and no stick appears to have been used on Ningangouda's head.

68. III. The beating of Bashetti.

The witnesses are Bashetti, Irappa, Nilawa, Bhimappa and Kashappa. There is, besides, the *panchnama* and medical certificate regarding the injuries caused to Bashetti. Except for Irappa, the remaining four witnesses in our opinion are reliable, and the evidence sufficiently shows that Bashetti was beaten with the sticks by several accused acting with the common intention of beating him.

69. Bashetti says that when he escaped from Kashappa Asuti's house he was pursued and accused No. 46 met and grappled with him, that he was hit with sticks by accused Nos. 17, 12 and 15, that accused Nos. 9 and 10 said "Beat him, he is still alive," and that he fell down unconscious. Nilawa says that accused Nos. 9, 12, 13, 15, 17 and 27 hit Bashetti with sticks, and that accused No. 9 said "He is still alive beat him". Before the Police, however, this witness did not mention accused No. 15. Bhimappa says that Bashetti was beaten with sticks by accused Nos. 12, 13, 14, 15, 16, 17, 21, 25 and 27. Of these accused No. 17 was not named by him before the Police. Kashappa says that after Ningangouda had been beaten accused No. 10 said "Ningangouda is dead. Let us follow Bashetti." He omitted to mention this, however, before the Police and the Committing Magistrate. In the result we find accused Nos. 9 12, 13, 14, 15 and 27 each guilty under section 147 of the Indian Penal Code, accused No. 9 guilty under section 323 read with section 114, and accused Nos. 12, 13, 14, 15 and 27 each guilty under section 323.

70. IV. The incident of Basangouda being trapped in Kashappa's house.

No offence was committed by any accused in connection with this incident, and there is the evidence of Ningangouda and Kashappa with regard to it. Ningangouda says that he heard from certain people about Basangouda having been dropped in Kashappa's house, and Nilkanthgouda corroborates Ningangouda on this point. The question has been argued, however, why the accused's attention was drawn to Basangouda at all, seeing that he had done nothing special on that day. Basangouda was an important member of the Goudar community. Pampanna speaks of "Basangouda's party people". He says that Basangouda had stood surety for Shivagangawa in the two criminal cases against her and her son and had helped her in her defence, that after Ningangouda had struck accused No. 34 Narayan Pujar felt that as there would be a trouble he went to seek out Basangouda, that he was asked as to why he went in search of Basangouda of all the persons, and that he gave instances in which Basangouda had intervened in quarrels between him and two others. According to Narayan Pujar, Basangouda was "an elderely person and a prominent person in the village". It does not appear to us surprising therefore that on learning that he and others had taken shelter in Kashappa's house some of the accused should come there and attempt to force him out of that house.

71. V. The incidents of—

(*a*) forcing Shivagangawa to leave Hulgur Sakrappa's house,

(*b*) disgracing her publicly,

(*c*) abducting her to the Ramlinga temple, and

(*d*) Subjecting her to hurt and further disgrace.

Mr. Desai has urged the following contentions with regard to these incidents :—

(*a*) Shivagangawa could have been pursued directly after she had left Dod-Bharmagouda's backyard. There seems to have been an interval between the time she left it and the time when the crowd directed their attention to her.

(*b*) She could not have gone to Hulgur Sakrappa's house ; it was easier for her to escape to her own house.

(*c*) She did not give so much provocation as to lead the crowd to disgrace her in the manner alleged.

(*d*) If the accused wanted to kill her this could be done much earlier.

72. With regard to the first point, the evidence does seem to suggest that Shivagangawa was not pursued as soon as she left the backyard of Dod-Bharmagouda. The evidence is that it was after some accused had been trying to get Basangouda out of Kashappa's house that information was brought that she had concealed herself in Hulgur Sakrappa's house, and that those accused then went in that direction. Yamnappa says that 7 or 8 accused came to Hulgur Sakrappa's house half an hour after the people had run away from Dod-Bharmagouda's backyard. Bhimappa deposes to the beating of Ningangouda and Bashetti and says that thereafter they went to seek the intervention of accused No. 9 who referred him to accused No. 10, that while he was speaking to accused No. 10 some other accused persons came there and said that Shivagangawa was not to be found, that one batch of the accused came from Hulgur Sakrappa's house and another from the Gojnur lane, and that the first batch said that Shivagangawa was in the house of Hulgur Sakrappa. All this shows that some of the accused were aware that Shivagangawa had gone to that house. But the prosecution case would seem to require that she had escaped from Dod-Bharamagouda's backyard unobserved or at least unpursued. A confusion must have been caused when the people in that backyard were suddenly assaulted with stones, and it is not improbable that in that confusion Shivagangawa escaped unobserved by her enemies.

73. It is said that Shivagangawa could not have passed through the passage to the south of Hulgur Sakrappa's house and then gone to that house as that passage was closed. When the learned Judge inspected the site the passage in question was found closed with thorns. Bharmava says that in order to go to the backyard of Dōd-Bharmagouda she passed through the Muslim lane by the side of Kashappa's house and then through the door of the backyard (which is to the south-east of it). Ningangouda also stated that he escaped from Dod-Bharmagouda's backyard by scaling the wall of the backyard. On this evidence it is contended that the passage in question must have been closed.

74. The fact, however, that thorns were found in the passage at the time of the inspection does not necessarily show that they were also there at the time of the offence. It is difficult to see *prima facie* why Hulgur Sakrappa kept his stack in Dod-Bharmagouda's backyard the passage should have been closed. Bashetti says clearly that there is a passage in the north-eastern corner of Dod-Bharmagouda's backyard which leads to the Muslim lane. There is a good deal of evidence that the accused who went to Kashappa's house went by that lane. What Barmava says may be true with reference to her practice at the time she gave evidence ; she does not say that she passed always by the round about route prescribed by her. As regards Ningangouda, if a number of persons were escaping from the backyard of Dod-Bharmagouda at the same time, some of them might find it more convenient and safer to go out by scaling the western wall of the yard and thus reach the Muslim lane. In our opinion there is nothing improbable in Shivagangawa's having taken shelter in Hulgur Sakrappa's house. Going to her house, which is at a greater distance, might involve meeting some of the accused in their dangerous mood, and it is perfectly natural that she would avoid going direct to her house.

75. A question has been asked, can it be said that the provocation given by Shivagangawa was sufficient to account for what the accused did to her ? According to Bhimappa :—

"Accused No. 10 and other accused moved towards that house saying that if the house is not opened, the house should be set on fire. I too followed Basappa (accused No. 10) requesting him not to do such things. All of them went and stood in front of Hulgur house and I stood separate from about 4 feet from them. Accused No. 10 then called on others to ask Shivagangawwa to come out or

the house would be set on fire. On this Shivagangawa came out opening the door and stood about 1 foot from the door. She said to the persons there : " Are you going to take my life, do what you like ". She was dragged to some distance and her sari was loosened ".

The accused's mood of truculence, it might be presumed, had not wholly subsided inspite of their recent success against their enemies. If it was realized that Shivagangawa had escaped from them without sufficient punishment having been meted out to her, sooner or later some members of the crowd would enquire where she was, and if on the place of her concealment being discovered or being communicated to the more aggressive elements of the crowd, the demand was made that she should come out of the house in which she had concealed herself, such a demand would accord with the mood or temper of those who had collected ; and so would the accused No. 10's threat that the house would be set on fire if she did not come out. Instead of being cowed down by such a threat and instead of submitting herself to accused No. 10 and others and asking for their mercy, Shivagangawa opened the door to the accused and threw out this challenge : " If you are men, do what you like with me ". Thereafter, according to the prosecution, Shivagangawa was disgraced by her waist band and *sari* being removed, not by the whole crowd acting with a common intention, but by accused Nos. 17 and 48. We do not think that this is an improbable incident. Whereas two important persons in the camp of the enemies of the Gojnurs had been successfully laid low and rendered helpless earlier in the morning, two more had timidly submitted to their beating, and the Police Patil had shut himself in his house and Basangouda had hid himself in Kashappa's house, this woman, who was hateful to them on account of her abusive language and who had abused them on that very morning, now dared to face them and threw out a most insulting challenge.

76. We find nothing improbable in the story that after she had made that challenge accused Nos. 17 and 18 should have divested her of her clothes. It cannot be presumed that at that stage all the accused present were animated by the common intention of outraging her modesty ; only those two, if the evidence be found satisfactory, would be guilty of such offence. If any other accused is found to have done any specific act like dragging her to the road amounting to an offence, the liability for such act, in our opinion, should at this stage be only of those accused. The other accused may have approved of or acquiesced in such acts and participated in the act of taking her to the Ramlinga temple. There seems nothing inherently improbable in her being carried there, and the psychology of a mob would account for any hurt caused to her and for any further indignities being heaped on her as alleged, if such acts are otherwise (those apart from the question of their improbability) found to have been committed. Neither Mr. Desai nor Mr. Chundrigar has addresed us specifically on the question of improbability of such later acts.

77. It is contended that after Shivagangawa came out of Hulgur Sakrappa's house the crowd of the accused present could have killed her outright, seeing that it is the prosecution story that she was subjected to blows and was noticed to be bleeding before she was conveyed to Nagappa's stack. It is, however, not difficult to believe that the accused should seek to taste the sweetness of revenge by prolonging her disgrace, parading her in public in a rude condition (this sadistic sex element was probably their reaction to the fact that the subjects of Shivagangawa's abuses were often the womenfolk of the Gojnurs) and making an exhibition of her nakedness, with further indignities superadded, at a public place like the Ramlinga temple. Compared to such a process of tasting revenge, the outright killing of her would have been crude and unimaginative.

78. The alleged acts of the accused involved in this stage are :—

(*a*) Indecent assault on Shivgangawa near Hulgur Sakrappa's house and her being further disgraced at the Ramlinga temple ;

(*b*) Her abduction, *i.e.*, forcible removal from Hulgur Sakrappa's house to the Ramlinga temple ;

(*c*) Hurt ; and

(*d*) Robbery or dacoity (forcible removal of her waste band and *sari* ; there is no evidence as to the removal of any of her ornaments).

The act of dragging Shivagangawa would amount to both abduction and assault or use of criminal force with intent to outrage her modesty. Abduction does not, by itself, amount to an offence, only the following kinds of abduction being punishable, viz. :—

(1) Abduction in order to commit murder (section 364) ;

(2) Abduction with intent secretly and wrongfully to confine a person (section 365) ; and

(3) Abduction of a woman to compel her marriage, or to force or seduce her to illicit intercourse, etc., (section 366).

No question of the application of section 364 can arise at the stage we are now considering, as it cannot be presumed, because Shivagangawa was ultimately burnt to death, that the act of kidnapping her from Hulgur Sakrappa's house was in order to murder her. Abduction, therefore, even if proved would not be punishable. The witnesses as to the incident are Irappa, Bharmava, Yamnaya, Chanbasangouda, Bhimappa, and Mudkappa. Of these we have held Irappa and Chanbasangouda to be unreliable witnesses.

79. Bharmava says that accused Nos. 15, 16, 13, 22, 17, 42, 48 and 38 dragged Shivagangawa and that accused Nos. 17 and 48 removed respectively her waist band and *sari*. As to the last statement a question suggesting that she had not made such a statement to the Police was put to the witness, but the learned Judge disallowed the question. It is contended before us that that question was not really disallowed, but that the note made against the question in the record as having been disallowed was wrong. This was no doubt an important question and it is not clear why it should have been disallowed. We are inclined to give accused Nos. 17 and 48 the benefit of doubt on this point and to exclude from our consideration the witnesse's statement in this respect. The Yamnayya says that he saw from the *khata* of the *neem* tree near the *chavdi* Shivagangawa being brought in a nude condition to the Ramlinga temple. Bhimappa says that Shivagangawa was dragged to the road and disrobed, that the accused took her in a nude condition towards the Gojnur's houses, that accused Nos. 21 and 39 held her by the arms, that she was beaten and pushed, and that accused No. 48 carried a *sari*. Mudkappa says that from the verandah

of the tea shop he heard the voice of accused No. 10 shouting, " Shivagangawa has been made naked and made to sit on the veranda. of the Ramlinga temple, and if anyone wants to see her he can come and see her ". On applying the principles already referred to, the net result is that no offence under section 354 or 323 or 394 or 395 can be held proved against any accused person, as none is mentioned by more than a single reliable witness in connection with any criminal act. The evidence, however, is sufficient in our opinion to prove that Shivagangawa had taken shelter in Hulgur Sakrappa's house, that she was forced to come out of that house, that thereafter she was disgraced, and that she was carried in a nude condition to the Ramlinga temple. As to the alleged incidents at that temple the evidence in our judgment is not so reliable, the main witness being Irappa whom we regard as an unreliable witness.

80. VI. The incidents that took place after the attack on Basangouda's house before he was carried away namely :—

(1) Bhimappa and Nilkanthagouda went to seek accused No. 10's intervention ;

(2) Accused No. 10 agreed to intervene provided Nilkanthagouda gave a guarantee on behalf of Basangouda that the latter would take no action regarding the burning of Shivagangawa ; after such guarantee was given accused No. 10 was brought to the house of Basangouda ;

(3) Accused No. 10 shouted to Basangouda, who was still inside, that he should come out as the matter would be compromised ; and

(4) When Basangouda came out he was hit by several accused, and he fell down in front of his house.

The points taken by the defence with regard to these incidents are—

(1) Bhimappa is a man of humble position earning four annas a day as a coolie ; he has sold his house to accused No. 10 on account of his debt and was staying in another's house; he had gone that very morning to accused Nos. 9 and 10 and asked them to intervene but had failed in his mission. Could such a man, particularly after his experience in the morning, act again as a piece-maker ?

(2) What kind of guarantee could Nilkanthagouda give on behalf of Basangouda who was absent ?

(3) What could be the subject-matter of the compromise ?

(4) When the front door of Basangouda's house was attacked, Basangouda, Bharamagouda and Amarappa had ample time to come out of the back door and if necessary leave the village.

81. With regard to the first point, it has to be observed that Bhimappa was not an ordinary coolie though he had been reduced to poverty. He was related to Amarappa and had had dealings with accused No. 10. Though he was a poor man, his seeking the intervention of accused No. 10 does not appear to be improbable. Even Nilkanthagouda, whose relations with the Gojnurs would be anything but cordial, as several of them had given evidence against him in an inquiry when he had been a Police Patil, says :—

" After being thrown in my house I was afraid of approaching the Gojnurs, but inspite of that fear I took the risk of being beaten as there was no alternative except of approaching the Gojnurs. "

The situation could be regarded as so desperate that Bhimappa's seeking the intervention of accused No. 10 a second time cannot be called unnatural.

82. As to the second point, we do not think it improbable that Nilkanthagouda would be called upon to give a guarantee on behalf of Basangouda who belonged to the same party and was a neighbour of Nilkanthagouda, both being interested in each other.

83. As to the third point, it is not difficult to imagine that the terms of the compromise would be that Basangouda's life would be saved or that he would be spared further beating in case he did nothing further in the matter of the burning of Shivagangawa.

84. As to the last point taken, Basangouda, Amarappa, and Bharmagouda had no certainty of being able to pass out of the house unobserved and did not know that none of the accused or their men had not been posted at the back door ; for if they were seen running away the risk to them would have been graver than if they stayed at home, as that might further infuriate the mob.

85. An important piece of evidence showing that Basangouda was beaten outside his front door is to be found in the fact that on the morning of the 22nd March the *panchas* found that blood had fallen on a piece of ground in front of Basangouda's house measuring about 9 inches by 6 inches and the blood has been certified to be human blood by the Imperial Serologist to whom a handful of earth from the spot was sent for examination. The learned Judge thought it unlikely that the blood was Basangouda's ; in his opinion it might be Ningangouda's blood. Mr. Desai argued that it might be Basangouda's blood, but that the blood had fallen out of the injury which Basangouda had got in the attack made by stone-throwing earlier in the day, while Basangouda was entering his house when he came home thereafter. I have already, in the earlier part of this judgment, commented on the learned Judge's theory and shown it to be untenable. As to Mr. Desai's suggestion, that also appears to us to be unacceptable. Basangouda's earlier injury had been received some time before ; thereafter he was for sometime in Kashappa's house ; and there is nothing to show that Basangouda came home in such a profusely bleeding condition or that he stood or sat in front of his house for such time that an area of 6 inches by 9 inches would be drenched with his blood. If that were the case, drops of blood would also fall inside the house and the *panchas'* attention would be drawn to such marks of blood ; but there is nothing stated about any such mark in the *panchnama*.

86. This circumstance in our opinion provides strong corroboration of the oral evidence that Basangouda was beaten with sticks by some of the accused immediately after he came out of his house. Regarding the beating of Basangouda, which we hold on the evidence did take place, the witnesses are Bhimappa, Nilkanthagouda, Bharmagouda son of Basangouda, Parvatewa and Amarappa. Of these we have held Nilkanthagouda to be an unreliable witness. Bhimappa says that accused Nos. 15, 16 and 39 struck Basangouda with a stick and Basangouda fell down, that accused Nos. 13 and 14 then struck him

with sticks and accused No. 25 struck him with an iron bar. Bharamgouda says that accused Nos. 14, 17, 25, 39, 40 and 48 stood near Basangouda when he was beaten and that accused Nos. 9, 10 and 12 were requested not to do such things. The witness however did not mention accused Nos. 17 and 48 before the Police and did not mention accused Nos. 14, 25, 39, 17 and 48 in the Committing Magistrate's Court. Parvatewa stated that accused Nos. 15, 16 and 39 hit Basangouda on the head with sticks, that accused Nos. 13 and 14 hit him with sticks and that accused No. 25 hit him with an iron bar and that accused Nos. 9, 10 and 12 were requested not to beat Basangouda. None of these statements were made by the witness to the Police, accused Nos. 25 and 9 not having been mentioned by her before the Police in any connection at all. Amarappa did not mention any specific accused specifically with this incident. In the result none of the accused persons having been mentioned by more than one out of the four witnesses held by us to be reliable none can be convicted of any offence in connection with this incident. We have held earlier that these accused were among those persons who committed house-breaking at Basangouda's house and Bharamgouda son of Basangouda has mentioned accused No. 14 as one of the accused who entered the house, but this evidence against these accused persons cannot be regarded as a corroboration of the evidence of Bhimappa that they beat Basangouda. The statement of Bharamgouda and Parvatewa to this effect cannot be acted upon in view of their omission to name those accused before the Committing Magistrate and the Police respectively.

87. VII. Basangouda's being taken away from the house after being beaten to Nagappa's stack with the object that he should be burnt to death.

This would be an offence under section 364. Anybody inciting others to carry him would be guilty under section 364 read with section 114 provided five or more persons inspired by such common intention were present, and the other persons would be guilty under section 364 read with section 149. The witnesses on this point are Ningangouda, Nilawa, Bhimappa, Nilkanthgouda, Bharamgouda, Parvatewa and Amarappa. Of these we have decided to regard Nilkanthgouda as an unreliable witness. Ningangouda says that accused Nos.10, 11 and 28 said that Basangouda should be taken away dead or alive, that the houses of the Gojnurs would not be safe if he was left alive and that he was carried away. Nilawa has said accused No. 10 said that it would be harmful to leave Basangouda. Bhimappa has said that accused Nos. 10, 11, 12 and 28 instigated others to lift Basangouda up, that accused Nos. 14, 25 and 39 lifted him and carried him away and that accused Nos. 19 and 20 sent him (the witness) and Nilkanthgouda back from Shankargouda's house. Bharamgouda son of Basangouda has stated that accused No. 11 asked why they were listening to the entreaties of Parvatewa, Nilkanthgouda and others and that Basangouda should be lifted up, that accused Nos. 14, 15, 25, 39, 40 and 48 carried him away in the direction of the Gojnurs houses and that accused No. 27 struck him as he was following the procession and sent him back. Parvatewa has stated that accused No. 11 said that Basangouda should be taken, that accused Nos. 14, 15, 39 and 40 lifted him and carried him away, that she and Bharamgouda followed the procession when accused No. 27 beat Bharamgouda and that she went as far as Adiveppa Saraf's house. Amarappa has said that he heard accused No. 11 asked "why are you listening the entreaties (of Patvatewa and others) lift him", that accused Nos. 14 and 40 held him by the legs and accused Nos. 17 amd 25 held him by the hands, accused No. 15 held him by the head and accused No. 39 held his waist. He did not mention accused Nos. 14 and 17 in his statement to the Police. The result that we get on the evidence mentioned above is that accused Nos. 10, 11 and 28 (who is dead) instigated the other accused to take Basangouda to the burning stack with the object that he should be burnt to death, that accused Nos. 14, 15, 25, 39 and 40 accordingly carried him from his house with such object and that accused No. 27 was present with the accused named above and was animated by the same intention.

88. The offence of abduction in order that the person abducted should be murdered is punishable under section 364. The question arises whether it should not also be regarded (more than 5 persons being concerned in it) as an offence under section 302 read with section 149 (we have held that Basangouda was burnt to death) or read with sections 114 and 109 or 34 of the Penal Code. Sections 149 and 34 cannot apply as the murder is not shown to have been committed by any of the accused who were concerned in the offence under section 364, and section 114 will not apply as it cannot be held that any of such accused person was present at the murder. As to section 109, it was not included in the charge and it would apply only if "no express provision is made by the Code for the punishment of the abetment". Here the offence which might otherwise amount to abetment of murder is expressly covered by section 364. We think, therefore, that section 109 also will not be applicable. In the result we find accused Nos. 14, 15, 25, 39 and 40 guilty under section 364. Accused Nos. 10 and 11 guilty under section 364 read with section 114 and accused No. 27 guilty under section 364 read with section 149.

89. VIII. There remains a small incident regarding which there is the evidence of Nilawa, namely, that at about 4 p.m. some 30 or 40 persons came to her house and insisted on her opening the door which she had chained from within, that when she opened the door they searched for Bashetti and could not find him there and that thereafter those persons, who included accused Nos. 39, 14, 17, 15, 48, 38 and 49, partook of some sweetmeats in her house and also took some of them away and sat on the verandah of one Baligar. The taking of the sweetmeats would technically be an offence of dacoity. It is included in one of the points for determination framed by the learned Judge. No accused can be held guilty of this offence.

90. To sum up our findings as to the guilt or otherwise of the different accused persons with regard to each of the different incidents sought to be proved by the prosecution are as follows :—

(*a*) *Stone throwing incident.*—Accused Nos. 9, 10, 12, 13, 21, 25, 27, 29, 48 and 49 are guilty under section 147 and section 323 rad with section 149, Indian Penal Code.

(*b*) *Beating of Ningangouda.*—Accused Nos. 12, 13, 14, 15, 16, 17, 21, 25, 27, 29, 39 and 48 are guilty under section 147 and section 323 read with section 149, Indian Penal Code, and accused No. 12 is guilty under section 323, Indian Penal Code.

(c) *Beating of Bashetti.*—Accused Nos. 9, 12, 13, 14, 15 and 27 are guilty under section 147, Indian Penal Code. Accused No. 9 is guilty under section 323 read with section 114 and accused Nos. 12, 13, 14, 15 and 27 are guilty under section 323, Indian Penal Code.

(d) *Shivagangawa's disgrace and abduction.*—No accused is found guilty of any criminal act with regard to this incident.

(e) *Burning alive of Shivagangawa.*—None of the accused is guilty.

(f) *The house-breaking at Basangouda's house.*—Accused Nos. 2, 8, 14, 18, 19, 21, 22 and 47 are each guilty under section 454 read with section 149.

(g) *Beating of Basangouda.*—None of the accused is guilty.

(h) *Abduction of Basangouda in order that he should be murdered.*—Accused Nos. 14, 15, 25, 39 and 40 are guilty under section 364, Indian Penal Code. Accused Nos. 10 and 11 are each guilty under section 364 read with section 114 and accused No. 27 is guilty under section 364 read with section 149, Indian Penal Code.

(i) *Burning alive of Basangouda.*—None of the accused is guilty.

(j) *The dacoity in Shivagangawa's house.*—None of the accused is guilty.

91. We, accordingly, allow the appeal and reverse the order of acquittal made in favour of accused Nos. 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 25, 27, 29, 39, 40, 47, 48 and 49 and find each of them guilty under the section or sections of the Penal Code mentioned above against his name. We dismiss the appeal so far as it relates to accused Nos. 1, 3, 4, 5, 6, 7, 20, 23, 24, 26, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 42, 43, 44, 45, 46, 50 and 51. They are in jail at present and we direct that they should be discharged.

92. As regards the sentences to be passed on those of the accused whom we have convicted, it has been pointed out to us that all the accused had been in jail for a period of between 14 to 18 months. We bear this fact in our mind in awarding the following sentences :—

Accused No. 2.—Is guilty in respect of incident (*f*) under section 454 read with section 149, Indian Penal Code. We think that in a case of this nature the maximum sentence of imprisonment provided by the section is called for. We accordingly sentence him to three years' rigorous imprisonment.

Accused No. 8.—Is also guilty in respect of the same incident under section 454 read with section 149, Indian Penal Code, and we sentence him to three years' rigorous imprisonment.

Accused No. 9.—Is guilty under section 147 in respect of incident (*a*) and is sentenced to 6 months' rigorous imprisonment. He is also guilty under section 323 read with section 149, Indian Penal Code, in respect of the same incident and we sentence him to 6 months' rigorous imprisonment under the said sections. He is further guilty in respect of incident (*c*), and we sentence him to one year's rigorous imprisonment under section 147 and to one year's rigorous imprisonment under section 323 read with section 114.

Accused No. 10.—Is guilty in respect of incidents (*a*) and (*h*). In respect of incident (*a*) he is sentenced under section 147 to one year's rigorous imprisonment and under section 323 read with section 149 also to one year's rigorous imprisonment. With regard to the offence under section 364 read with section 114 it has been pointed out that this accused is 63 years old and that the said offence was committed in the heat of passion by an excited mob and cannot, therefore, have been premeditated. But this is a most serious and most heinous offence and in our opinion, in view of the fact that two persons were brutally and vindictively burnt alive, this accused as well as accused No. 11, who were the ring-leaders of those responsible for the offence must be given a higher sentence than the rest of the accused who were concerned therein. At the same time, we think that the circumstances mentioned above deserve some consideration, and we are of opinion that the ends of justice would be sufficiently met if accused No. 10 is awarded rigorous imprisonment for ten years under section 364 read with section 114, Indian Penal Code, and we order accordingly.

Accused No. 11.—Is concerned only in incident (*h*). On the same ground that we find applicable in the case of accused No. 10 we sentence him to ten years' rigorous imprisonment under section 364 read with section 114.

Accused No. 12.—Is guilty in respect of three incidents (*a*), (*b*) and (*c*). With regard to the first incident he is sentenced to 6 months' rigorous imprisonment under section 147 and also 6 months' rigorous imprisonment under section 323 read with section 149, Indian Penal Code. With regard to incident (*b*), in which he took a leading part he is sentenced to 18 months' rigorous imprisonment under section 147, and one year's rigorous imprisonment under section 323 read with section 149 and one year's rigorous imprisonment under section 323, Indian Penal Code. With regard to incident (*c*) he is sentenced to one year's rigorous imprisonment under section 147 and one year's rigorous imprisonment under section 323.

Accused No. 13.—Is guilty in respect of three incidents (*a*), (*b*) and (*c*). With regard to incident (*a*) he is sentenced to 6 months' rigorous imprisonment under section 147 and six months' rigorous imprisonment under section 323 read with section 149, Indian Penal Code. With regard to incident (*b*) he is sentenced to one year's rigorous imprisonment under section 147 and one year's rigorous imprisonment under section 323 read with section 149, Indian Penal Code. With regard to incident (*c*) he is sentenced to one year's rigorous imprisonment under section 147 and one year's rigorous imprisonment under section 323, Indian Penal Code.

Accused No. 14.—Is guilty in respect of four incidents (*b*), (*c*), (*f*) and (*h*). With regard to incident (*b*) he is sentenced to one year's rigorous imprisonment under section 147 and one year's rigorous imprisonment under section 323 read with section 149, Indian Penal Code. With regard to incident (*c*) he is sentenced to one year's rigorous imprisonment under section 147 and one year's rigorous imprisonment under section 323, Indian Penal Code. With regard to incident (*f*) he is sentenced to three years' rigorous imprisonment under section 454 read with section 149. With regard to incident (*h*) he is sentenced to eight years' rigorous imprisonment under section 364, Indian Penal Code.

Accused No. 15.—Is guilty in respect of incidents (*b*), (*c*) and (*h*). With regard to incident (*b*) he is sentenced to one year's rigorous imprisonment under section 147 and one year's rigorous imprisonment under section 323 read with section 149, Indian Penal Code. With regard to incident (*c*) he is sentenced to one year's rigorous imprisonment under section 147 and one year's rigorous imprisonment under section 323, Indian Penal Code. With regard to incident (*h*), in view of his age which is 23 years he is sentenced to six years' rigorous imprisonment under section 364.

Accused No. 16.—Is guilty only in respect of incident (*b*). He is sentenced to one year's rigorous imprisonment under section 147 and one year's rigorous imprisonment under section 323 read with section 149, Indian Penal Code.

Accused No. 17.—Is guilty only in respect of incident (*b*). He is sentenced to one year's rigorous imprisonment under section 147 and one year's rigorous imprisonment under section 323 read with section 149, Indian Penal Code.

Accused No. 18.—Is guilty only in respect of incident (*f*). He is sentenced to three years' rigorous imprisonment under section 454 read with section 149, Indian Penal Code.

Accused No. 19.—Is guilty only in respect of incident (*f*). He is sentenced to three years' rigorous imprisonment under section 454 read with section 149, Indian Penal Code.

Accused No. 21.—Is guilty in respect of three incidents (*a*), (*b*) and (*f*). With regard to incident (*a*) he is sentenced to six months' rigorous imprisonment under section 147 and six months' rigorous imprisonment under section 323 read with section 149. With regard to incident (*b*) he is sentenced to one year's rigorous imprisonment under section 147 and one year's rigorous imprisonment under section 323 read with section 149, Indian Penal Code. With regard to incident (*f*) he is sentenced to three years' rigorous imprisonment under section 454 read with section 149, Indian Penal Code.

Accused No. 22.—Is guilty only in respect of incident (*f*). He is sentenced to three years' rigorous imprisonment under section 454 read with section 149, Indian Penal Code.

Accused No. 25.—Is guilty in respect of incidents (*a*), (*b*) and (*h*). With regard to incident (*a*) he is sentenced to six months' rigorous imprisonment under section 147 and six months' rigorous imprisonment under section 323 read with section 149, Indian Penal Code. With regard to incident (*b*) he is sentenced to one year's rigorous imprisonment under section 147 and one year's rigorous imprisonment under section 323 read with section 149, Indain Penal Code. With regard to incident (*h*), in view of his age which is 22 years, he is sentenced to five years' r gorous imprisonment under section 364, Indian Penal Code.

Accused No. 27.—Is guilty in respect of four incidents (*a*), (*b*), (*c*) and (*h*). With regard to incident (*a*) he is sentenced to six months' rigorous imprisonment under section 147 and six months' rigorous imprisonment under section 323 read with section 149, Indian Penal Code. With regard to incident (*b*) he is sentenced to one year's rigorous imprisonment under section 147 and one year's rigorous imprisonment under section 323 read with section 149, Indain Penal Code. With regard to incident (*c*) he is sentenced to one year's rigorous imprisonment under section 147 and one year's rigorous imprisonment under section 323, Indian-Penal Code. With regard to incident (*h*), he is the youngest of all the accused concerned in this incident, being 20 years of age. He is sentenced to four years' rigorous imprisonment under Section 364 read with section 149, Indian Penal Code.

Accused No. 29.—Is guilty in respect of incidents (*a*) and (*b*). With regard to incident (*a*) he is sentenced to six months' rigorous imprisonment under section 147 and six months' rigorous imprisonment under section 323 read with section 149, Indian Penal Code. With regard to incident (*b*) he is sentenced to one year's rigorous imprisonment under section 147 and one year's rigorous imprisonment under section 323 read with section 149, Indian Penal Code.

Accused No. 39.—Is guilty in respect of incidents (*b*) and (*h*). With regard to incident (*b*) he is sentenced to one year's rigorous imprisonment under section 147 and one year's rigorous imprisonment under section 323 read with section 149, Indian Penal Code. With regard to incident (*h*) he is sentenced to six years' rigorous imprisonment under section 364, Indian Penal Code.

Accused No. 40.—Is guilty only in respect of incident (*h*). He is sentenced to six years' rigorous imprisonment under section 364, Indian Penal Code.

Accused No. 47.—Is guilty only in respect of incident (*f*). He is sentenced to three years' rigorous imprisonment under section 454 read with section 149, Indian Penal Code.

Accused No. 48.—Is guilty in respect of incidents (*a*) and (*b*). With regard to incident (*a*) he is sentenced to six months' rigorous imprisonment under section 147 snd six months' rigorous imprisonment under section 323 read with section 149, Indian Penal Code. With regard to incident (*b*) he is sentenced to one year's rigorous imprisonment under section 147 and one year's rigorous imprisonment under section 323 read with section 149, Indian Penal Code.

Accused No. 49.—Is guilty only in respect of incident (*a*). He is sentenced to six months' rigorous imprisonment under section 147 and six months' rigorous imprisonment under section 323 read with section 149, Indian Penal Code.

93. We direct that the sentences in the case of each accused who has been given more sentence than one should be concurrent.

94. In the very laborious task of dealing with this difficult and intricate case, the hearing of which lasted over 16 days, we have been greatly assisted by both the learned Advocate General and Mr. Bhulabhai Desai and we wish to record our sense of indebtedness to them and our appreciation of their mastery of the voluminous record, their analytic clarity, their fairness and their anxiety to help the Court. The complexity of the case and the number and variety of the arguments advanced has resulted in the unusual length of this judgment as well as the judgment of my learned brother, my judgment also

suffering from the fact that there has unfortunately been a repetition therein of a number of references and details of arguments.

95. As regards the disposal of property the order made by the learned Sessions Judge will stand.

Per Rajadhyaksha J. :—I agree. As the case has been argued before us for nearly four weeks, I think it is right that I should give shortly my reasons for so doing.

The learned Judge's argument in paragraph 81 of his judgment is that he must either convict or acquit all the accused that were on trial before him. It is true that most of the witnesses in the course of their examination-in-chief, except Bharamgouda Police Patil, do say that all the accused took part in the various incidents starting from the burning of Hulgur Sakrappa's stack till they raided the house of Shivagangava in search of Bashetti and removed the sweetmeats and dispersed after tea at Mudkappa's shop. But the statement in examination-in-chief has got to be tested, as all evidence has to be, by reference to the cross-examination and the earlier statements made by the witnesses. It was argued by the learned Counsel that where witnesses have shown callous disregard of truth in implicating persons whose presence they are not prepared specifically to depose to, their evidence with respect even to those whom they implicate cannot be accepted without reserve. This criticism would be applicable with respect to those witnesses who involve the accused whose absence can be clearly proved and whose implication in the offence by the witnesses must cast a certain amount of doubt on his credibility. It would apply, for instance, in the case of Virupaxagouda who includes Ningappa Gojnur among the persons whom he mentions as being present in the Gori *Halla* after the two burnings. No one else deposes to his presence and he is not one of the accused. The witness's relations with Ningappa were bad owing to a decree which Ningappa obtained against him and another person and his moveables were attached. If, therefore, Virupaxagouda can show himself capable of involving a person towards whom he bears enmity as being concerned in such a serious offence, doubt must necessarily arise as to his credibility with respect to those whom he implicates. This argument, however, is of no avail when the witnesses make a general statement that all the accused were there. This could be put down to the general impression that a large number of persons were involved, that most of the accused had absconded since that day and to the knowledge that they subsequently gained. It is not altogether easy for ignorant villagers not used to the correct method of giving evidence in Court to dissociate what they actually saw from what they learnt subsequently. However, when pressed either in examination-in-chief or in cross-examination to specify the particular accused who did a particular act, the witnesses have shown a remarkable restraint in mentioning the individual accused. When the evidence was tested with respect to the earliest statements before the Police there has been considerable accordance in the matter of the accused named by them. If there are one or two mistakes committed, the benefit of such mistakes must go to the accused concerned. But having regard to the number of the accused involved in the various incidents in which they are aleged to have taken part, it would not be right to discard the whole evidence of the witnesses concerned. It, therefore, becomes the duty of the Court to scrutinize the evidence of each witness carefully and to compare it with that of the other witnesses.

The procedure that we have followed in this case is to take the evidence of each witness, to scan it in the light of probabilities and their own previous statements. Having come to the conclusion that certain witnesses are reliable, we have proceeded to consider how far they have proved the case against each of the accused in respect of each of the incidents. In this matter also we have not overlooked the possibility of even reliable witnesses making an honest mistake and have acted on the evidence of such witnesses when it finds corroboration in the evidence of another reliable witness.

In appreciating the evidence, we have kept before our mind the observations of Their Lordships of the Privy Council in *Sheo Swarup* v. *King Emperor* (1934) 36 Bom. L. R. 1185. Mr. Desai rightly argued that there was a double presumption in favour of the accused, the first arising from the axiom that all the accused are presumed to be innocent until they are proved to be guilty and the second, from the fact that the evidence has already been appreciated and the accused found to be not guilty by the learned Additional Sessions Judge and the assessors.

In dealing with this case it is first necessary to find out which of the incidents took place during the course of that afternoon, and if some of the incidents are found to have taken place, whether any of the accused can be held to have taken part therein. The learned Additional Sessions Judge held that some sort of a fight was indulged in by some persons of the two main parties in the village in the backyard of Dod-Bharamgouda, and some persons, as a consequence, received injuries more or less trivial. He further thought that this incident took place at about 4 or 5 p.m., and that it was on this slender foundation that the rest of the structure of the prosecution case was built up. He did not hold it to be proved that Ningangouda and Bashetti were assaulted in front of Kashappa's house and appears to have been of opinion that the injuries that they received must have been caused when there was a fight between the members of the two factions collected together in the two backyards. He held the allegations about Shivagangava being disgraced and of Basangouda's house being broken into not proved by the evidence on record; and he was of opinion that Shivagangava and Basangouda were not burnt alive. At the end of paragraph 75 the learned Judge said: "It was not unlikely that Basangouda and Shivagangava might have as well eloped as one of the assessors opined", although there was no suggestion to this effect made to any of the prosecution witnesses. In paragraph 85, however, the learned Judge observes: "It is quite likely after the departure of Narayan, Shivagangava and Basangouda came to be attacked near about the backyard of Dod-Bharamgouda and they died as a result. It is equally likely that these two were made to disappear between the interval." He expressed the view that "those responsible for getting up this case in the form in which it had come before the Court, went to the length of building an altogether imaginary and false case of two persons having been burnt alive with all the accompanying embellishments." As Shivagangava and Basangouda have been missing from the village, the learned Judge thought that

" one of the two things must have happened to them, either that they must have deliberately disappeared or had been done to death. If the former, then the prosecution witnesses have indulged in a very dangerous game in trying to involve and jeopardise the lives of 51 accused in the dock. If the latter, then, the witnesses for the prosecution have foolishly exaggerated the case of deaths of Shivagangava and Basangouda and in doing so, practically put before the Court, a story so entirely different from the one which must have been true that it is impossible to sift the truth from the exaggeration with the result that the prosecution case fails on all the charges." The learned Judge did not hold it to be proved that Shivagangava or Basangouda or both were either burnt in the stack of Nagappa Kumbhar in Gori *hola*, much less burnt alive. The same view has been pressed before us by Mr. Bhulabhai Desai who appeared for accused Nos. 9 to 16 and who argued the general case on behalf of all the accused with great earnestness and ability.

The first point then to consider is whether Shivagangava and Basangouda were burnt in the stack of Nagappa Kumbhar. There are three eye-witnesses in respect of burning of Shivagangava, viz., Ira, Channaya and Pampanna and five eye-witnesses in respect of the burning of Basangouda, viz., Chanbasangouda, Pampanna, Dyama, Virupaxappa and Mahadevappa. The principal argument of the learned Counsel for the defence was that the story told by these witnesses was inherently improbable and that on a general consideration, their evidence has to be discarded. His main point was that two human bodies could not be burnt in the manner alleged by the prosecution to the extent of leaving only a few small bones, and that the Goudar party had gone to the extent of creating some appearance of two bodies having been burnt when the Police Sub-Inspector arrived at the scene of offence at 2 a.m. In connection with the first contention, he argued that with the fodder that was available, two human bodies could not have been burnt to the extent of leaving a few bones. For this argument reliance was mainly placed on the evidence of the goldsmith who clearly describes what the normal process of cremation is. He says that " a pyre of 3′ × 5′ is prepared, and the dead body to be cremated is to be placed in the middle of the pyre with big logs of wood heaped above and below the body. Oil is poured over the pyre, and after it is ignited, the skull bursts after two hours, and the body is cremated after four hours, leaving some bones which are collected on the third day. The bones are sufficient in quantity to fill an earthern jar about 1½ feet wide. Pieces of bones are about a span in length and are whitish in colour. The pieces crumble to powder if pressed with fingers." And then he adds: " If a cartload or two of fodder are stacked on a human body placed on the ground the body would not burn. The body would not be burnt even if a cartload or two of fuel-wood are added on that fodder and then burnt, the body will not be burnt. In order to burn the body, the body must be between two piles of fuel-wood." This witness was really called for the purpose of proving the identity of article No. 22 which is said to have been found in the house of accused No. 48. He cannot be regarded as an expert witness on the subject of the burning of human bodies. The possibility of two bodies being burnt in the manner alleged by the prosecution was put to Dr. Mandlik, the anatomist. Dr. Mandlik at Exhibit 77 has stated that " if a body is placed on the ground and then it is covered by fodder one or two cartloads and then again that is covered by one or two cartloads of fuel wood, the body should burn. All depends upon the amount of fire and heat reaching the body." In view of this evidence of the anatomist it is difficult to say that the process alleged by the prosecution by which two bodies are said to have been burnt was not sufficient to reduce the two bodies to bones and ashes. It has to be remembered that the process of burning was, according to the prosecution, begun at about 2 or 3 p.m., and when the Sub-Inspector arrived on the scene at 2 a.m. the same night, the two heaps were still smouldering. The police had to add 10 or 12 jars of water to extinguish the fire. Moreover, there are several witnesses who say that the process of adding fuel was going on for some time. In order to show the improbability of this story, it was argued that the original version of the prosecution was that two persons were thrown in the burning stack of Nagappa Kumbhar which was said to have been lighted up by accused Nos. 6 and 10. But as the stack was much too high, and as the two persons could not be flung thereon with any ease, the story was subsequently altered in order to make it appear that two persons were burnt apart from Nagappa Kumbhar's stack. The basis of this version is the statement made by Chanbasangouda, in his statement under section 164, that two persons were thrown on the stack of Nagappa Kumbhar. But I do not see any inherent difficulty in reconciling the two stories. It may be that the original idea might have been to burn him in Nagappa Kumbhar s stack, and with this end in view, the two persons were thrown against the burning stack; but as the evidence shows, the bodies struck the stack and rolled down. It was then that fodder was brought from adjoining places, and the persons burnt. Mr. Bhulabhai poured ridicule over the story of fodder being brought from the adjoining stack by arguing that there was no evidence that the fodder was stored in the compound of the schoolhouse, and that if the accused wanted some more fodder, it was far easier to obtain it from the already burning stack of Nagappa Kumbhar rather than from any place round about. In support of the first contention, the learned Counsel referred to the statement of the Sub-Inspector that during the course of the investigation no one told him about a heap of fodder stack in the school compound. Speaking for myself, I am very doubtful about the admissibility of such a statement, importing as it does what witnesses stated to the Sub-Inspector in their statements in the course of the invetigation. No use can be made of such a statement except to the extent indicated by section 162, Criminal Procedure Code, and the evidence of the Sub-Inspector on which reliance is placed is tantamount to saying that none of the witnesses whom he examined in the course of the investigation said anyting about the fodder stack. Even assuming that this evidence is admissible, it only indicates an ommission on a point which was not regarded as vital and cannot indicate that the story of the witnesses in Court is necessarily false because the statement to that effect was not made by them in the course of the investigation. The absence of any reference to it in the police statement would not necessarily indicate subsequent improvement in the story. As regards the second argument of the learned Counsel, it has to be remembered that the burning stack of Nagappa Kumbhar's must have generated considerable heat, and it would have been extremely difficult to utilize the already burning stack in order to burn the bodies which were lying at a short distance from it. It is probably for this reason that fodder and fuel had to be brought from a stack in the adjoining school, and as the witness Channaya says the fodder which had been placed on the bodies caught fire, showing the extreme proximity of the bodies to the burning stack.

The fact, however, remains that when the Sub-Inspector arrived in the village at 2 a.m. there were two heaps burning which had to be extinguished by pouring water thereon, and when the remains were collected under a *panchnama*, Exhibit 82, the next morning, they consisted of charcoal, burnt pieces of wood, mud, ash, pebbles and a conical piece of conch. This would strongly support the prosecution case that two human bodies were burnt that afternoon. It was argued both in the trial Court and before us that in these finds there is a distinct indication of an attempt being made to create evidence to prove that two bodies were burnt. In support of this argument reference was made to the fact that only one heap of burnt ashes was discovered when the *panchnama* was made, that only on the top of the heap there was charcoal, that no big bones were found and that the small bones that were found might belong to more than two persons. It was agued that the finding of pebbles and a conical piece of conch among the materials collected was a tell-tale circumstance showing that the bones must have been collected from some adjoining cremation-ground in a *nalla*, that in the process of such collection the pebbles and the conch which are normally found in the *nalla* found their way to the Gori *hola* where Nagappa Kumbhar's stack is situated. This argument was tried to be reinforced by reference to the evidence which shows that during the preceding two or tree months there had been two or three cremations in the Hori *holla* which is the cremation-ground of the village.

Now, as regards the first argument, the Police Sub-Inspector stated that when he came to the village he noticed some foul smell and that when he went at 2 a.m. to the place where the bodies were alleged to have been burnt, he saw two heaps in addition to the main burning stack of Nagappa Kumbhar. The Sub-Inspector, however, stated that when the *panchanama* was made the next monring, the two heaps that he had noticed at night had become undistinguishable owing to the fact that when water was poured, the two heaps which were not far apart might have got mixed up. The *panchnama* itself does not refer to the two heaps but says that the *panchas* were taken to the place where the "dead body" was burnt. This reference to the dead body in singular would have carried some weight but for the fact that eariler in the *panchnama* there is a reference to the *panchas* being told that two murders had taken place in the village. The *panchanama* does not really speak of either one or two heaps, but is a *panchnama* of the place where the offence is alleged to have been committed. It is true that the *panch* in his evidence states that he found that one burning stack and two heaps were completely extinguished and it appeared that there was water poured on it. As the *panch* was giving evidence very nearly five months after making the *panchnama*, he may have forgotten about there being one or two heaps or, what is more likely, he may have imported, while giving evidence, knowledge which came to him subsequently. There is no reason to distrust the evidence of the Sub-Inspector, and on his evidence it can be held that there were two heaps when he visitd the village at 2 a.m. It cannot, therefore, be concluded that the story of two heaps has now come forward in order to support the prosecution case that two bodies, and not one, were burnt. It was further argued that the *panchas* found that there was charcoal on the *top* of the heap and this suggested that this must have been deliberately placed at the top by those who wanted to fabricate evidence. The Sub-Inspector does say in his evidence that the charcoal collected in one bag was at the top of the heap, that it was taken out from the heap and put in the bag. The charcoal pieces were not sifted out of the ashes. It is argued by the learned Counsel that this evidence of the Sub-Inspector should be disbelieved because there was no reference to the charcoal in his diary as admitted by him in paragraph 30 of his evidence. In my opinion the absence of mention of charcoal in the diary does not negative the fact that charcoal was found. Charcoal was actually found when the *panchnama* was made, and it could not be suggested that between the arrival of the Sub-Inspector and the making of the *panchanma*, some charcoal was deliberately kept on the top of the heap. The diaries are not written immediately and the Sub-Inspector was not asked any questions whether the diary with respect to this part of the investigation was made immediately on his arrival at 2 a.m. The diary must have been written the next day, and there was no mention made about the finding of the charcoal on the top of the heap presumably, because the Sub-Inspector did not think that the matter was of sufficient importance. But the *panchnama* made at 10 a.m. does show that there was charcoal on the top of the heap. It was argued that the fact that charcoal was found only on the top of the heap and not in its interior showed that it must have been kept there deliberately. In my view this inference does not necessarily follow. Much of the wood underneath must have been burnt completely by the heat so as not to leave any charcoal, and the charcoal and unburnt pieces of wood were found at the top merely because when water was poured on the heaps, the wood and cinders at the top became extinguished, leaving charcoal and unburnt wood.

It is further argued that the round pebbles and the conical piece of conch found among the material collected at the alleged scene of offence showed that attempts must have been made to plant some articles there, and that the existence of the pebbles and the conch gave the show away. The soil of Gauri *hola* was not purely black soil as the *panch* says in paragraph 13 of his evidence. He says that the soil was of earth mixed with sand and that it was neither black nor red and was midway between two. The Sub-Inspector in paragraph 33 of his evidence says that the pebbles which were shown to him were likely to be found in a *nulla*. But he further says that such pebbles could also be found where bodies were burnt. As regards the small conical conch, he says that such a conch would not be found in a field of black soil but it would be found in ordinary fields as also in *nalla* beds and river beds. By ordinary fields he meant fields which were sandy and which were a mixture of black and red soil. There is nothing to show that if the soil from any other part of Gori *hola* had been taken, it would not have contained pebbles or a conical conch. The mere presence of these articles among the debris collected from the alleged scene of offence does not indicate that something was brought from elsewhere.

It was lastly argued that the finding of the bones, such as they were, clearly indicated that two human beings could not have been burnt, leaving such small bones, and that the bones which were actually found might belong to more than two persons, a theory which would suppport the bones having been brought from the ordinary cremation ground in the *nalla*. In this connection reference was made to the three recent cremations which had taken place in the Hori *holla*. The suggestion is that the remnants of the bones from these cremations might have been brought to the alleged scene of offence and planted therein

in order to create evidence of two burnings, and that in doing so, they inadvertently brought pebbles and the conch, a circumstance which gave the show away. The evidence of Dr. Mandalik with respect to the bones is that there were three petrous bones of the base of the skull, two of the right side and one of the left. As there can be only one right petrous bone to each skull, the Doctor was of opinion that the bones must belong to at least two bodies. Of course, it is possible, as the Doctor himself admitted in his cross-examination, that all the three jaw bones may belong to three different bodies. But from this, it does not follow that they necessarily belonged to more than two human bodies. If it could be conclusively established on the Doctor's evidence that the bones, as found, must belong to more than two bodies then the defence theory would be established beyond any doubt ; for instance, if three right petrous bones of the skull had been found, then it would have been impossible to explain the fact on the prosecution theory. But in so far as the Doctor's evidence clearly estatlishes that the bones found on the 22nd morning must belong to more than one human skeleton, the prosecution case gains considerable strength that two perons were burnt on the afternoon of the 21st. Similarly, the Doctor found among the bones that were sent to him two pairs of *condyles*, consisting of two right bones and two left bones. As one skeleton can have only one right and one left bone, it is again clear that the bones belong to at least more than one human skeleton. The Doctor also found that one pair was smaller than the other and might presumably belong to a female skeleton though both the pairs came from adult human beings. This opinion also lends support to the prosecution case. Of course, the Doctor was informed when the bones were sent to him that two human beings had been burnt alive, but he was not told that, of the two persons burnt, one belonged to the male sex and the other to the female sex. In the absence of the pelvic bone, the Doctor was not able to say definitely that one of the skeletons was a female skeleton. But as one pair of *condyles* was small and delicate, he ventured to express the opinion that it belonged to a female, although he admitted in his cross-examination that it might belong to a delicate male person. The evidence of the anatomist, therefore, clearly establishes beyond any doubt that the bones belonged to more than one human skeleton and that one skeleton might in all probability be that of a female. Although this evidence does not support the defence, it is not inconsistent with the suggestion made on their behalf. It was argued that no big bones were found, and the learned Public Prosecutor at Dharwar appears to have attempted to explain their absence by suggesting that the accused may have removed the bigger bones before the arrival of the police. Although it is true that no big bones were found, there is nothing to show that the big bones of the arms and the legs would necessarily be found after the bodies had been burning for nearly 8 or 10 hours. No such question was put to the Doctor as to whether it was reasonable to expect big bones being found. The gold-smith, Gangappa, on whose evidence considerable reliance is placed on behalf of the accused, states that the bones found after the regular cremation are only about a span in length an crumble to powder if pressed with fingers. This latter statement is in accordance with the view expressed in Taylor's Medical Jurisprudence. According to him, the bones found at the scene of offence could only fill an earthen jar 1½′ wide. It is somewhat difficult to accept the defence explanation that the bones were obtained from the cremation ground in Hori *holla*. From the evidence it appears that there were three cremations within two or three months of the date of offence. The Police Patil says that the wife of Yamnnya died two months before the date of the offence and was cremated in the Hori *holla* which is a cremation ground. Sangappa, Exhibit 75, states that one Ballappa died on the 3rd of February 1943 and was cremated in the *nalla*. According to the witneses Gangappa, one Badgir Manappa died about two months before the date of the offence and was burnt in Hori *holla*. But all these cremations took place very nearly two months before the date of the alleged offence, and it is somehwat difficult to believe that their bones would still be lying in the cremation ground for over two months. According to Gangappa, the relatives of the deceased person visit the scene of cremation on the 3rd day to collect the bones. The bones that were shown to the anatomist were all the bones that were found at the place of the alleged burnings. The fact of their discovery within a few hours of the alleged burnings near the stack of Nagappa Kumbhar strongly supports the prosecution case that Shivagangava and Basangouda were burnt on the afternoon of the 21st of March. One of the points on which some emphasis has been laid by the learned trial Judge is that in this village several people had disappeared during the preceding 8 or 10 years. The suggestion is that Shivagangava and Basangouda may also have disappeared. If there was only this disappearance and no other evidence, it could not possibly lead to any conclusion that they were murdered. But when the disappearance is taken along with the facts that two heaps were found to be burning at 2 a.m. when the Sub-Inspector came, and that the material collected at the place contained human bones which belonged to more than one person of whom one might very probably be a woman, the prosecution evidence that Shivagangava and Basangouda were burnt near the stack of Nagapa Kumbhar gains very considerable strength. If the possibility put forward by the defence that Shivagangava and Basangouda had eloped and disappeared were to be accepted, it would necessarily mean that the persons responsible for fabricating the case against the accused not only brought about the disappearance of Shivagangava and Basangouda but, taking advantage of a trifling altercation which took place at about 4 p.m. that afternoon, built up an elaborate case thereon, created evidence in order to show that some burnings took place near the stack of Nagappa Kumbhar and collected some human bones from nearby cremation ground and put them in the burning heaps of fodder and fuel in order to create an appearance that two persons were burnt, and that they did all this within the space of about 8 hours after some altercation had admittedly taken place at about 4 or 5 p.m. It is quite true that the defence are not bound to explain as to how Shivagangava and Basangouda have disappeared ; but when the evidence against the accused is that they were murdered and is supported by the finding of burnt heaps of fodder and fuel containing bones of human bodies, some explanation has got to be given of these admitted facts, and the explanation that is sought to be given is, in my opinion, not altogether acceptable.

It seems to me that the learned Additional Sessions Judge in discussing the evidence in great detail has lost sight of the broad facts and the general probabilities of the case. I have already referred above to the impossibility about the evidence of murder being fabricated between 4 or 5 p.m. and 2 a.m. It would be impossible to accept the defence theory that in order to bring about an appearance of housebreaking, the people concerned in fabricating the evidence broke open, between 5 p.m. and 2 a.m., the

back door of Basangouda's house, set fire to the stack inside, broke open the middle door and inflicted marks on the front door in order to show that violence was applied to it. Taking the ordinary course of human conduct, this would be inherently impossible within a short space of few hours. Moreover, if they wanted to fabricate evidence about Basangouda and Shivagangava being burnt, it was hardly necessary to create evidence about the house-breaking or setting fire to cotton or, for the matter of that, even the breaking of the middle door. If they wanted to fabricate evidence of house-breaking, it would have sufficed if they had stopped short at breaking open the back door. In arriving at the conclusion that nothing happened that day except a scuffle between two sections of the people in the two backyards, the learned Judge has, it seems to me, not given sufficient consideration to the broad facts of the case: The injuries on the persons of the accused which could not all be explained on the theory that stone-throwing only took place; the two heaps that were found burning near the stack of Nagappa Kumbhar when the Police Sub-Inspector arrived and noticed the foul smell; the pieces of human bones which were discovered in the material that was collected at the alleged scene of offence and sent to the anatomist; the fact that Basangouda's house was broken open, the back door and the middle door showed marks of violence and some cotton was found half burnt; and the fact that in front of Basangouda's house there was a patch of blood-stained earth. It is impossible to believe that after the scuffle which, according to the defence, took place at about 4 or 5 p.m. the persons bent on fabricating the evidence sat down to create an elaborate structure over it, made Basangouda and Shivagangava disappear from the village from that day until today, made elaborate preparations by bringing into existence two heaps of fodder and fuel, putting human bones there collected from the adjoining cremation ground, faked up an appearance of house-breaking by dismantling the doors and setting fire to the cotton, and what is still more important, coached a large number of witnesses to give false evidence according to the story which they wanted to put up. When the Sub-Inspector arrived the next day, he examined a large number of witnesses and it is not shown that the story given by the witnesses then differed materially from the story given by them in the Court. In a large number of cases, particularly as regards the movement of the various witnesses, the evidence of many witnesses dovetails into that of the others; and it would clearly be impossible to coach the witnesses to this degree of perfection within 10 or 12 hours. In this connection it is important to note how the first information reached the Police. After seeing the altercation in the two backyards, Narayan Pujar hid himself for a short time in his own house and then went first to Dyamangouda at Hombal and told him what had happened. Dyamangouda happens to be the brother of Basangoda. Dyamangouda then proceeded to Gadag and then gave information to the Police Sub-Inspector at 10-30 the same evening. It was the contention of the defence that Narayan Pujar could not have left at about 1 p.m. as he says but must have left by train which leaves Balganur station at 6-30 and reaches Hombal at about 7-30. In my opinion, this view cannot be accepted. That view is based on the argument that when it was possible for Narayan Pujar to go by train he would not have walked a distance of 7 or 8 miles. If he went by train at about 5 o'clock, the report which reached the Sub-Inspector should, it is contended, include a reference to the two burnings. As the report contains no reference to them, it was argued that these incidents had in fact not taken place. In my opinion, this view cannot be accepted. It is not unusual for villagers to undertake a journey of 8 or 9 miles on foot, however irksome such a procedure may appear to people brought up in the towns. Kalkangouda states that when he was called by the Police he walked from Garwar to Gadag in spite of the fact that there is a train service between Balganur and Gadag. Secondly, it has to be remembered that Narayan Pujar himself was not asked any question whether he had in fact travelled by the train. Nor was Channaya asked whether Narayan Pujar had travelled with him by the evening train that day. Kalkangouda who had gone to see Channaya off was asked no question to suggest that he might have seen Narayan Pujar at the Balganur Station. Moreover, the information as given by Dyamangouda makes a request that the Police should proceed to Kadadi as soon as possible. If, in fact, noting had taken place at Kadadi except a minor altercation between the two crowds when Narayan Pujar went to inform the Police, the people concerned in getting up the false case would have hardly requested the Police to come to Kadadi as soon as possible, as it would have meant giving themselves so much less time for fabricating the evidence and coaching up the witnesses. The argument of the learned Counsel that the information given was vague because it had not till then decided what shape the prosecution story should take can hardly be accepted. Then there is the fact that many of the accused were absconding from that very day, though many of them state in their statements that they were in the village. The Police had even to issue proclamations and attach the properties of one or two of the accused before their presence was secured. Although this by itself is not a circumstance which can be given much weight, it is a circumstance which cannot altogether be ignored when taken with other evidence in the case. It seems to me that the learned Judge has not taken into consideration the cumulative effect of all these broad-facts and has apparently lost his bearings in a meticulous consideration of very small details of the evidence.

The prosecution story may roughly be divided into four major incidents: (*a*) The scuffle between the people collected in the backyard of Dod-Bharamgouda and those collected in the backyard of accused No. 28, followed by the beating of Ningangouda and Bashetti; (*b*) Shivagangava being dragged out of the house of Hulgur Sakrappa, being disgraced and disrobed, being paraded naked through streets and ultimately being taken to the stack of Nagappa Kumbhar and there burnt alive; (*c*) The house of Basangouda being borken into, and Basangouda's being beaten and forcibly taken away; (*d*) Basangouda being burnt alive near the stack of Nagappa Kumbhar, and the crowd then proceeding to the house of Shivagangava in search of Bashetti.

As regards the first incident, the prosecution story is that there was a fire in the stack of Hulgur Sakrappa in the backyard of Dod-Bharamgouda. It was extinguished by some people and the people dispersed. When in a few minutes thereafter Ningangouda returned to the extinguished stack, he saw accused No. 34, and addressing him said: "These are the people who set fire to the stack and then come to extinguish it." This irritated accused No. 34 who asked Ningangouda contemptuously whom he was referring to. This annoyed Ningangouda who slapped accused No. 34. Accused No. 34 thereupon went saying

that he would call his master. Hearing of this altercation, several people gathered in the backyard of Dod-Bharamgouda and within a short time all the accused came there. Shivagangava also came there and began abusing the Gojnurs. Thereupon people in the backyard of accused No. 28 began to throw stones, and several people in the backyard of Dod-Bharamgouda including Basangouda, Bharamgouda Police Patil, Ningangouda, Nilkanthgouda and others were injured. When the stones began to be thrown, people in the backyard of Dod-Bharamgouda began to disperse. Some, including Shivagangava, ran in the direction of the passage which leads out from the north-western corner of the backyard. Some came out of the gate in the southern wall of the backyard and pursued Ningangouda and Bashetti who, by that time, had come on the *katta* of Kashappa where they were threatened by accused No. 21 standing on the wall. First Ningangouda was assaulted and thereafter the crowd pursued Bashetti. In the meantime Bashetti's sister, Nilava and grand-mother, Sangamma, came there and intervened, and thereupon the crowd left Bashetti who was removed by some people to the adjoining house of Ramangouda. The defence theory is that all the story about accused No. 34 having gone to collect people is false and excrescence, as Mr. Bhulabhai Desai put it. The defence argument was that Ningangouda and Bashetti were not beaten in front of Kashappa's *katta* and Ramangouda's house respectively, but they must have received their injuries when there was a quarrel between the people assembled in the two backyards at the time of extinguishing the fire in Hulgur Sakrappa's stack. It was argued that there was a free fight between the Gouder party people assembled in the backyard of Dod-Bharamgouda and the Gojnur party people collected in the backyard of accused No. 28, and that this might have resulted in the injuries which were received by Bharamgouda Police Patil, Ningangouda, Shivagangava and Bashetti. This theory was sought to be supported by the arguments that Ningangouda used the words "These people set fire to the stack and then come to extinguish it." These words, it is contended, suggested a collection of a lot of people in the backyard of accused No. 28. It was further argued that a trifling quarrel between Ningangouda and accused No. 34 could not have led to the Gojnurs and 43 other people being collected. It was pointed out that so many people could not have collected within half an hour during which accused No. 34 is said to have gone to collect the people. The Police Patil's inaction to take any further steps, it was contended, showed that nothing serious happened that afternoon. In my opinion, none of these arguments are sufficient to indicate the improbability of the story of the prosecution and to show that the oral evidence given by the witnesses on the point must be false. The words "these people" do not necessarily indicate that there were many people collected at the time when these words were uttered, and is consistent with the prosecution version that by using these words, Ningangouda was referring to the Gojnur party people of whom accused No. 34 was one. There is considerable evidence to show that the relations between the Gouder party and the Gojnur party were far from cordial. Accused Nos. 28 and 39 had filed complaints against Shivagangava and Bhasetti and had got them convicted and fined. There were several acts of incendirarism committed in the village. Some stacks of the Gouder party people were burnt and also some stacks belonging to the Gojnur party people. Although there is no evidence to show as to who actually set fire to the stacks, this must have led to a mutual suspicion being entertained by each party against the other. If then accused No. 34 went round to Gojnurs, told them that Ningangouda had charged them with having set fire to the stack of Hulgur Sakrappa, it is not unlikely that at the instance of the Gojnurs several people collected. Because the witnesses state that all the accused gathered there, it does not necessarily mean that every one of the 51 accused was then present. It was contended that it was the harvesting season; that the people would normally be in their fields, and that it was, therefore, not possible for so many people to come there within such a short time. But there is evidence that it was the end of the harvesting season and much of the corn had been collected in the threshing floors; it would not, therefore, be impossible to collect people within a short time. The inaction of the Police Patil would not indicate that no serious incidents took place in the village that afternoon. The Police Patil himself had received some injuries and was confined to his bed throughout the rest of the day; and even when the Police Sub-Inspector came that night, he was not able to meet him. That there was an interval of time between the extinguishing of the fire and the subsequent stone throwing which resulted in the injuries to Ningangouda, Basangouda, Bharamgouda Police Patil and others is clearly established by the evidence of no less than 12 or 13 witnesses, and the evidence of each witness fits in with the evidence of other witnesses, as regards the movements of each of them in the early part of that afternoon. I am, therefore, not prepared to accept that the whole story of accused No. 34 being slapped after the fire was extinguished, that accused No. 34's having gone to collect people and there being stone-throwing when the two crowds had collected in the two backyards, is false. It is to be remembered that there is no evidence whatever that there was a free fight between the two crowds. There is only one witness Pampanna who speaks about stones being thrown on both sides, but all the other witnesses are unanimous that it was only the people collected in the backyard of accused No. 28 who threw stones across the compound where people had collected in the backyard of Dod-Bharamgouda. It was argued that if people wanted to come and attack Ningangouda and Bashetti they need not have taken the circuitous route and come by the Muslim lane as there was a direct access through the gate in the southern wall of the compound of Dod-Bharamgouda's backyard. But when the stone throwing began, it is clear that people began to run in different directions, and there is evidence to show that some people went towards the passage in the north-western corner in the backyard, presumably in pursuit of Shivagangava who went in that direction. It is this part of the crowd that may have subsequently come where Ningangouda and Bashetti were assaulted, and they could more easily come to that place by going through the Muslim lane. There is no evidence to show that any persons among the crowd collected in the backyard of accused No. 28 was hurt. I am, therefore, of opinion that there is nothing inherently improbable in the prosecution story regarding the stone-throwing in the backyard of Dod-Bharamgouda and the subsequent assault on Ningangouda and Bashetti.

There are several witnesses in this case who speak not only about the first incident but also about the other incidents that took place in the course of that afternoon. It would be convenient to consider the credibility of these witnesses in connection with one of these incidents and merely to refer to their evidence while the other incidents are being considered.

In connection with the first main incident, there is the evidence of Bashetti, Exhibit 9, Ningangouda, Exhibit 15, Nilava, Exhibit 29, Bharamgouda Police Patil, Exhibit 93, and Kashappa, Exhibit 48 whose evidence I shall consider at this stage. The other witnesses are Irappa, Exhibit 18, Bharmava, Exhibit 19, Yamannya, Exhibit 20, Chanbasangouda, Exhibit 24 and Bhimappa, Exhibit 30, and Pampanna who also speak about this incident and whose evidence I shall consider in connection with the incident of Shivagangava's disgrace. There is also Nilkanthgouda who speaks about this incident but whose evidence I shall consider in connection with the breaking of Basangouda's house and his being beaten therein. In my opinion, out of these witnesses, the evidence of Irappa, Chanbasangouda, Pampanna and Nilkathgouda must be rejected for the reasons to be given in the appropriate place.

I see no reason whatever to reject the evidence of Bashetti and Ningangouda. It is true that both Bashettti and Ningangouda were signatories to an application, Exhibit 14, which was sent to the Mamlatdar complaining about the conduct of the Gojnurs in respect of the signatories' right to use the village tank. But that was a dispute, more or less, of a civil nature, and the people who made the representation merely intended to assert their right to the use of the tank, and it would not necessarily indicate that there was any grudge against the Gojnurs. No serious contradictions have been brought out between the evidence given by these witnesses and the statements made by them before the Police. In connection with the later incident of the breaking of the house of Basangouda, Bashetti mentioned accused Nos. 12, 13, 14, 15, 38 and 39 ; whereas he did not mention before the Police that accused Nos. 13, 14 and 38 were concerned in this affair. Apart from this trifling discrepancy, the story given by the witness appears to have been consistent. It is true that in the complaint filed against him and Shivagangava, accused Nos. 10, 4, 48 29 and 42 were witnesses. But in spite of this possiblity of the existence of a grudge, it is only accused No. 10 that this witness involved in any particular incident of that afternoon. It is, therefore, impossible to suggest that this witness is out to implicate every one who gave evidence against himself and his mother in the two prosecutions.

As regards Ningangouda, there is no reason to distrust his evidence. I have already dealt with his having signed the application to the Mamlatdar, Exhibit 14. He was a witness for Shivagangava and Bashetti in the complaint filed by accused No. 28. The story given by this witness also appears to be consistent, except that he had made a slight mistake in saying that accused Nos. 10 and 17 threw stones at the people collected in the backyard of Dod-Bharamgouda, because before the Police he did not mention the names of those two accused. Similarly, in connection with the later incident, viz., breaking open the back-door of Basangouda's house, he has named accused No. 35 whose name he did not take in his statement before the Police. Having regard to the fact that numerous persons took part in numerous incidents that afternoon, such slight discrepancy cannot be attached much weight to. I, therefore, agree in holding that his evidence is on the whole reliable.

The evidence of Nilava is mainly in connection with the assault on Bashetti. The learned Additional Sessions Judge appears to think that she is a false witness and that she was not in the village that day at all. The only reason why the learned Sessions Judge takes this view is that her husband lives in Hubli ; and her proper place should be with her husband there. But there is evidence to show that she had come to her mother Shivagangava, and when complaints were filed against her in August 1941 she continued to remain there until the cases were decided in December, and for some time thereafter. But the most convincing argument against the view of the learned Sessions Judge is that the Sub-Inspector, when he came to the village that night, found Nilava at her house at 3-30 a.m. In view of this, it is impossible to accept the learned Judge's conclusion that she was not in the village and that she is a got-up witness. The only mistake that she has made in giving evidence in the Court is that although she mentioned accused Nos. 9, 14, 15, 12, 13, 17 and 27 as being concerned in the attack on her brother Bashetti, she did not mentioned the name of accused No. 15 before the Police. Similarly she made a slight mistake in including accused No. 15 among the persons who raided her house that afternoon in search of Bashetti and took away sweetmeats. Apart from this minor discrepancy, her evidence appears to have been consistent, and the learned Counsel for the defence were not able to show any reason why her evidence should be disbelieved. Then there is the evidence of Bharamgouda Police Patil who is the only person who gives the names of certain definite accused whom he saw in the backyard of accused No 28. He has mentioned the names of 31 accused whom he waw in that backyard. His statement was recorded by the Police on the very next day, i.e. on the 22nd, and yet nothing has been brought out in his cross-examination to show that he made a mistake in naming the accused in the Court. It is true that he has made one or two statements in the Sessions Court which he did not make either before the Police or before the Committing Magistrate. One is with reference to what his daughter told him about Shivagangava being taken away naked by a large number of people to Ramlinga temple. He has also stated that when Yamanya saw him that evening, he told that people had been kept for watch to prevent information reaching the Police. He did not make this statement either before the Police or before the Committing Magistrate. In my opinion, these comparatively insignificant omissions are not sufficient to discredit the evidence of this witness.

As regards the evidence of Kashappa, it has to be remembered that he is the brother of accused Nos 1 and 35 and naturally biased in favour of the accused. Even so, he states that he saw the altercation between two crowds in the two backyards, and also saw Ningappa being beaten. He then speaks as to how some part of the crowd came to his house and demanded that Basangouda who had hidden himself in his house be released. He adds that when he expressed his inability to hand over Basangouda as Basangouda and others had in spite of his wishes taken refuge in his house, he was told by the crowd that he should go and file a complaint of dacoity. He then proceeded with some of the crowd in order to file a complaint of dacoity when some two persons cried out that Shivagangava was hidden in Hulgur Sakrappa's house, and then the crowd went in that direction and he went and hid himself in Manappa Kumbhar's house for two hours. In the last part of his evidence he says that on the evening of the same day accused No. 10 sent for him and asked him to leave the village the next day and further instructed him to say to the Police that Basangouda and Bashetti had gone to set fire to the stack of Nagappa Kumbhar where

they were caught by some persons and burnt. In criticising this witness, the learned Judge has stated that the witness had not related about this last incident in his evidence before the Committing Magistrate ; but there is nothing on record to show that such a statement was not made. Although in his evidence in the Court he has mentioned the names of accused Nos. 14, 15, 17, 38, 46 and 51 as the persons who accompanied him to file the complaint of dacoity, it is not quite clear whether he mentioned all these names in his evidence before the Committing Magistrate. At one place in his cross-examination, it was elicited that he told before the Committing Magistrate that he could not say who the persons who came to his house were. But at another place he has stated that he did not mention the names of accused Nos. 15, 51 and 38 being among the persons who had accompanied him to file the complaint of dacoity. In any case, this part of the evidence is immaterial as the incident does not form the basis of any charge against the accused.

It was argued that as accused Nos. 1 and 35 were made accused because they were not prepared to give false evidence and involve the Gojnurs, this witness might have, out of fright, agreed to give evidence least he might be treated in the same fashion. But it is to be noted that neither accused No. 1 nor accused No. 35 say that they were ever asked to involve the Gojnurs falsely, and that it was on that account that they had been involved in the case. Therefore, this argument against the witness also does not stand. On the whole, his evidence appears to be reliable, though with respect to accused Nos. 12 and 10 it cannot be acted upon, as in his statement to the Police the name of accused No. 12 was not mentioned by him in connection with the assault on Ningangouda and that of accused No. 10 was not mentioned as the person who said that Ningangouda was dead and that they should follow Bashetti.

As I have stated, the evidence of other witnesses would be examined by me in connection with other incidents, and I agree with my learned brother in holding that the evidence of Irappa, Pampanna, Chanbasangouda and Nilkanthgouda cannot be accepted. But excluding the evidence of these three witnesses, there is the evidence of Bashetti, Ningangouda, Bharmava, Yamanya, Bhimappa, Kashappa, Narayan Pujar and Bharmagouda Police Patil in connection with the stone throwing in the backward of Dod-Bharamgouda.

Bashetti's evidence is that accused Nos. 9 and 10 instigated other people to throw stones and threw stones themselves, and this resulted in Dod-Bharamgouda and Bharamagouda Police Patil being injured. He further says that accused No. 21, standing on a wall, threatened him and Ningangouda. Ningangouda says how his quarrel with accused No. 34 began and how accused No. 12 asked him why he had slapped accused No. 34 when he, i.e., accused No. 12, came in the backyard of accused No 28. He further says that accused Nos. 10, 17, 25, 26, 27, 29, 48 and 49 threw stones, and, as a result, Dod-Bharamgouda, Bharamagouda Police Patil and he himself were hurt. He further corroborates Bashetti that accused No. 21, standing on a wall, threatened them. Out of the accused whom he has named, he did not mention accused Nos. 10 and 17 before the Police, and his evidence, therefore, cannot be accepted with respect to these accused. Bharmava has stated that all the accused were present in the backyard of accused No 28 when stone-throwing began, as a result of which Dod-Bharamgouda and Bharamgouda Police Patil were hit. Yamanya has also made a general statement that all the accused were in the backyard. But both these witnesses have not mentioned any specific accused, and the general statement that all the accused were there cannot be accepted. Bhimappa has spoken as to how the quarrel with accused No. 34 began and how, as a result of stone-throwing, Dod-Bharamgouda, Bharamgouda Police Patil and Ningangouda were hit. He also deposed as to how accused Nos. 10, 11, 12 and 13 incited the crowd to take offensive against the people in the backyard of Dod-Bharamgouda. Both Kashappa and Narayan Pujar have generally stated that all the accused were present in the backyard of accused No. 28 and this general statement cannot be accepted. The result, therefore, is that with respect to this incident the presence of accused Nos. 9, 10, 12, 13, 21, 25, 27, 29, 48 and 49 only is deposed to by more than one witness. They must, therefore, all be held guilty under section 147 as being guilty of rioting with the common intention of causing hurt to people in the backyard of Dod-Bharamgouda. Accused No. 10 must also be held to have incited the crowd to throw stones. As injuries were caused as a result of the stone-throwing, they are also guilty under section 323 read with section 149.

As regards the assault on Ningangouda, the evidence consists of the statements of Bashetti, Ningangouda, Bhimappa and Kashappa whose evidence is, in my opinion, acceptable. According to Bashetti, accused No. 12 pulled Ningangouda on the *katta* of Kashappa, but as his name was not mentioned before the Police, his evidence cannot be acted upon. Ningangouda says that he was pulled by accused No. 12, and that accused Nos. 17, 29, 39 and 48 were among the people who came to attack him. The name of accused No. 17 was not mentioned before the Police, and to that extent his evidence cannot be acted upon. Bhimappa has mentioned accused Nos. 12, 13, 14, 15, 16, 17, 21, 25 and 27 as persons who were concerned in the assault on Ningangouda ; but in his cross-examination, he has stated that accused No. 12 alone pulled Ningangouda's legs. His evidence, therefore, must be held to indicate that accused No. 12 alone pulled Ningangouda's legs while the rest were merely present at that time. Kashappa has stated that accused No. 12 dragged Ningangouda, but as this statement was not made before the Police, it cannot be acted upon. He further says that accused Nos. 13, 15, 17, 38 and 51 beat Ningangouda, and that accused Nos. 4, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 25, 27, 28, 29, 39, 47 and 48 were among the persons who were present when Ningangouda was assaulted. As apart from Kashappa, no one mentioned any particular accused as being concerned in Ningangouda's beating with stones, it would not be safe to act on Kashappa's evidence. But there is the evidence of Ningagouda and Bhimappa that accused No. 12 pulled Ningangouda by his legs, and accused Nos. 12, 13, 14, 15, 16, 17, 21, 25, 27, 29, 39 and 48 are mentioned by more than one witness as being present on that occasion. These accused must, therefore, be held guilty under section 147 of the Indian Penal Code. Accused No. 12 must, in addition, be held guilty under section 323, and the remaining accused constructively guilty under section 323 read with section 149.

As regards the attack on Bashetti, there is the evidence of Bashetti, Irappa Doni, Nilava, Bhimappa and Kashappa. Irappa's evidence must, on the whole, be regarded as unreliable. Bashetti says that he was pursued when accused No. 46 grappled with him; accused Nos. 17 and 15 struck him with a stick, and

accused No. 12 hit him on the head. Accused Nos. 9 and 10 exhorted the people present by saying: "Beat him, he is still alive." Nilava who came on the spot a little after Bashetti was beaten says that when she came, accused Nos. 9, 12, 13, 14, 15, 17 and 27 were hitting Bashetti with sticks and accused No. 9 encouraged them saying that he was still alive. Of these accused, accused No. 15 has not been mentioned before the Police, and his evidence, therefore, cannot be acted upon with respect to that accused. Bhimappa says that he saw accused Nos. 12, 13, 14, 15, 16, 17, 21, 25 and 27 beat Bashetti with sticks. Of these, accused No. 17 was not mentioned before the Police, and his evidence, therefore, cannot be accepted with regard to him. Kashappa merely says that after beating Ningangouda, accused No. 10 said: "Ningangouda is dead; follow Bashetti." As this statement was not made either before the Police or Committing Magistrate, it cannot be acted upon. It would thus be seen that there is the evidence of more than one witness with regard to the presence of accused Nos. 9, 12, 13, 14, 15 and 27. These must be held guilty under section 147. There is evidence of at least two witnesses to show that accused Nos. 12, 13 14, 15 and 27 beat Bashetti with sticks. They must, therefore, be held guilty under section 323 of the Indian Penal Code. As accused No. 9 instigated others to beat Bashetti, he would be guilty under section 323 read with section 114.

The second part of the prosecution story is with respect to Shivagangava. According to the prosecution, after Bashetti was left unconscious when Nilava and Sangamma intervened, the crowd proceeded to the house of Kashappa and demanded that Basangouda who was hiding there should be brought out. When Kashappa expressed his inability to open the door it was suggested to him that he should go and file a complaint of dacoity against those who had entered and sought refuge in his house. He then came out and was proceeding with some of the crowd to file a complaint of dacoity when some one brought news that Shivagangava was hiding in the house of Hulgur Sakrappa. The crowd then left Kashappa and proceeded to the house of Hulgur Sakrappa. The house was closed, and the crowd demanded that it should be opened. One witness Bhimappa who did not like the proceedings which had taken place, went to accused No. 9 to ask for his intervention. Accused No. 9 directed him to accused No. 10 who was in the shop of the smithy nearby. Accused No. 10, however, took a different attitude and asked the crowd to demand the house being opened on pain of its being set on fire. At that stage Shivagangava came out and defiantly asked the crowd to do what they liked with her. Thereupon, it is alleged, several people dragged her from the *katta* of Bharmava who was living in the house of Hulgur Sakrappa. Accused No. 17 removed her waistband and accused No. 48 removed her *sari* and bodice. She was then taken in a naked condition from there first to the house of the Gojnurs and then to the Ramlinga temple. At the Ramlinga temple she was subjected to further indignities. Accused No. 10 is said to have put a *chappal* in her mouth and accused No. 9 is said to have kicked her. Accused No. 10 is further said to have proclaimed that Shivagangava was naked, and that any one who wanted to see her could come. Thereafter she was taken through Kembannavar lane up to the house of Adiveppa Saraf, and from there to the stack of Nagappa Kumbhar which had already been set on fire a few minutes earlier by accused Nos. 6 and 10 who went there while Shivagangava was being taken to the Ramlinga temple. There, four people held her by legs, four people held her by the arms and two by the head. She was then flung in the burning stack of Nagappa Kumbhar. She hit the stack but rolled down whereupon some fodder was obtained from the adjoining school and heaped upon her and thus she was burnt alive. Thereafter the crowd proceeded in search of Basangouda. It was argued on behalf of the defence that none of these incidents took place, and that all the witnesses who gave evidence with respect to any of these incidents were not telling the truth. In showing the improbability of these incidents having taken place, it was argued that there was no reason why Shivagangava should have come to the backyard of Dod-Bharamgouda at all and that if the crowd was intent on assaulting her, why she was allowed to go away. It was further argued that there was no passage at the north-west corner of the backyard of Dod-Bharamgouda, and there was no real reason for her to seek protection as the wrath of the crowd was not directed against her. It was then contended that even when she was in the house of Hulgur Sakrappa, there was plenty of time for her to go away before the crowd arrived on the scene and there was really no ostensible reason as to why the crowd should want to disgrace Shivagangava in that manner. It was pointed out that there was no special reason why accused Nos. 17 and 48 should want to disgrace her and why she should be the object of special vengeance. I do not consider that there is any substance in any of these arguments for demonstrating the improbability of the prosecution story. There is evidence to show that the relations between Shivagangava and Bashetti on the one hand, and the Gojnur party people on the other were far from cordial. Accused Nos. 28 and 39 had filed complaints against Shivagangava and Bashetti and had got them convicted. It is fairly clear from the evidence that Shivagangava was a woman with a foul tongue, and Yamanya has stated that accused No. 10 told him that Shivagangava's abuses could not be borne any longer. Nilava has also stated that she was abusing foully and Mudkappa states that Shivagangava was in the habit of abusing. The Police Patil Bharmagouda also has given evidence that she used to abuse Gojnurs in a foul manner. It is, therefore, not unlikely that when an altercation began between the persons in the backyard of Dod Bharamgouda and those people who had gathered at the backyard of accused No. 28, Shivagangava should come there and should indulge in her normal habit of abusing the Gojnurs foully. It was this thing that probably led to the promiscuous stone-throwing as a result of which Basangouda, Shivangouda and others were injured. The wrath of the crowd at that time was not directed particularly against her and when the stone-throwing began and was a one-sided affair, the people in the backyard of Dod-Bharamgouda ran in different directions. It is, therefore, not surprising that Shivagangava also went away, as the evidence shows, in the direction of the gap in the north-western corner of the backyard. It was urged that there was no such gap and the proper way for the people to run away was through the door in the southern wall of the backyard. But there can be no doubt, on the evidence, that there was this gap, and the map which has been drawn to scale clearly shows it. Shivagangava had obvious grounds for apprehension as she has been abusing the Gojnurs foully, and after the stone-throwing began she might, not unreasonably, have expected some people to follow her up. It was for this reason that she went and hid herself in Bharmava's house. It is true that she may have had some time during which she might have escaped. But there

is no evidence to show as to how many people from among the Gojnur party were near about. Her house, as the map shows was a considerable distance away from the backyard and she may have reasonably apprehended that if she were to go to her own house she would be way-laid and attacked. When the door of Bharmava's house was opened under the threat that the house would be set on fire otherwise, Shivagangava came out and challenged the crowd to do their worst hardly realising that the crowd would take her at her word. It was this challenge which, it seems to me, led to accused Nos. 17 and 48 to disgrace her by making her naked. Once the fury of a crowd is awakened, it is normal experience that there is no knowing to what extent the crowd psychology may take it. There is not necessarily any logical connection between the first causes and the final result. I, therefore, do not think that there is anything in the general argument advanced by the learned Counsel to make the whole of the prosecution story improbable, and to make the direct evidence of the witnesses with regard to these incidents unreliable.

Witnesses Irappa, Bharmava, Yamanya, Chanbasangouda, and Bhimappa speak about Shivagangava's being disgraced and her being taken to the Ramlinga temple. These witnesses also gave evidence about her being taken to the Ramlinga temple. In addition to these witneses, there is the evidence of Channaya and Pamapanna who speak about the actual buring of Shivagangava. The evidence of Channaya is sought to be corroborated by the evidence of Kalkangouda and Mudkappa, and finally there is the evidence of goldsmith, Gangappa, who proves that article No. 22 which was found in the house of accused No. 48 was made by him for the use of Shivagangava.

As regards Irappa who is 16 years of age, his evidence must, in my opinion, be rejected. During the course of the incidents of that afternoon, he says that he saw the various incidents from no less than seven places. As he was a boy of 16, it is not unlikely that the boy's curiosity might have led him to different places; but the evidence that he gave in the Court is so inconsistent with his statement before the Police that it appears to me very unsafe to act on the evidence of Irappa. Some of the incidents which he is alleged to have seen were of such a nature that it would be impossible to forget them while giving his statement to the Police. These points have been dealt with in considerable detail by my learned bother, and I shall only very briefly refer to them, for instance, he stated in the Sessions Court that accused No.17 removed the waist-band and accused No. 48 removed the *sari* and bodice, a statement which he never made to the Police. It is hardly likely that an incident of this character when seen by a boy would not impress itself so much on his memory as to make him forget about it when giving his statement before the Police. Similarly, he has deposed to accused No. 10 having put a *chappal* in the mouth of Shivagangava and having paraded her saying that Shivagangava was naked and that any one could come and see it. He further stated that accused No. 9 kicked her and challenged any one to come and resque her. Both these statements were never made to the Police. Similarly, with regard to the incident of Bashetti being beaten, he never stated before the Police that Nilava and Sangamma intervened though he gave evidence to that effect in the Court. Similarly, as regards the actual burning of Shivagangava and subsequent breaking open of the house of Basangouda he has given very many details in Court such as: she was held by four persons by the legs, by four persons by the arms and by two persons by the head that hay was brought from the school compound, that he then ran and saw Ningangouda sitting with Chanbasangouda, that later on when he went to Ramangouda's house Bashetti was removed to the cattle-shed and that from there he heard people shouting and calling upon Basangouda to open the door, and eventually saw the door being broken open. None of these details have been stated by him to the Police. Further there is some doubt as to whether he could see the incident about Shivagangava being burnt from the place where he says he was. According to his evidence in the Court he stood on the road in front of Saraf's house and from there saw the whole incident. But before the Police he stated that he stood in front of Basappa Saraf's house. There was considerable argument before us as to which was Basappa's house and the point taken by the defence was that Basappa's house was next to the corner one and the door of which faces east. If he stood there, Irappa could not see what was happening near the stack of Nagappa Kumbhar. The prosecution argument, on the other hand, was that when the witness in his statement stated about Basappa Saraf's house, he really meant Adiveppa Saraf's house which abuts on the main road and from the front of which the alleged burning could be seen. The corner house has always been known as Adiveppa Saraf's house and that is how it is referred to in the evidence of several witnesses. Bharamgouda calls it Adiveppa's house and so does Parvateva. It is undoubtedly true that Adiveppa's father was Basappa, but Adiveppa himself is an old man of 60, and it is hardly likely that the house would continue to be called by his father's name. In view, therefore, of Irappa's statement before the Police that he stood in front of Basappa Saraf's house, considerable doubt is created as regards the creditbility of this witness. I am, therefore, of opinion that it would not be safe to rely on his evidence.

Bharmava, is, in my opinion, a reliable witness in spite of the fact that the learned Judge characterized her as a person of weak intellect and defective vision. The story that she gave appears to be perfectly natural, and she does not say a thing more than what she could have seen whilst standing on her *katta*. Although she might not have been able to identify people in the dock while the trial was going on before the learned Additional Sessions Judge she could have, in the middle of the day, recognized the people who dragged Shivagangava only a few feet from her *katta*. There are practically no serious contraditions in the story that she gave in the Court and the story she gave before the Police. It is true that she stated in the Court that accused No. 17 removed the waist-band and accused No. 48 removed the *sari*. A question appears to have been asked as to whether she made the same statement to the Police and when she said that she did not remember, an attempt was made to prove that she made no such statement to the Police. But for some reason, which is not altogether clear, it was disallowed by the learned Additional Sessions Judge. It appears from the answers given by the Sub-Inspector that the witness did not state before the Police that accused No. 17 removed the waist-band and accused No. 48 removed the *sari*. It appears that the learned Additional Sessions Judge did not intend to disallow the whole question, but only the first part of it although the endorsement made by him would appear to suggest that he had disallowed the whole question. On the whole I am of opinion that Bharmava is a reliable witness.

Yamanya Walikar is also, in my opinion, a reliable witness. He says he used to borrow money from accused No. 10 for seven or eight years and would, therefore, have leanings towards Gojnurs. Although he mentioned certain people as being concerned in the incidents of that afternoon both before the Police and the Committing Magistrate, he has only mentioned accused Nos. 10 and 48 in his evidence in the Court. Under these circumstances his evidence against the accused must carry greater weight than might otherwise have been attached to it. It was argued that this witness being a Walikar should have taken steps either to inform the Police or to prevent the various occurrences. But it has to be remembered that after all Walikars are very subordinate village officials. When the Police Patil himself was severely handled earlier in the day, one would hardly expect Yamanya to take any active part in preventing the unfortunate incidents of that afternoon. He did go to the Police Patil that evening to report to him what had happened. The Police Patil says that Yamanya was directed to go to the Police but that Yamanya gave an excuse that there were pickets placed round about the village, and, that, therefore, it was not possible for him to go to the Police, though Yamanya himself does not give this explanation. The three contradictions which have been pointed out in his evidence are, in my opinion, of a very minor significance. He stated in Court that he saw Ningappa sitting on a *charpoy* and that he went and sat on the *katta* of a *neem* tree when Shivagangava was brought to Ramlinga's temple from Gojnur's house. He did not make mention of these details before the Police, but these are, in my opinion, very trifling discrepancies which do not detract from the general credibility attaching to the evidence of this witness.

Then there is the evidence of Chanbasangouda. His evidence has been criticized very severely both by the learned Judge and the learned Counsel for the accused. His story is that when he saw an altercation going on in the backyard of Dod-Bharamgonda he went to the house of accused No. 10 and asked him to stop that affair. Accused No. 10 then asked him not to bother and that, thereupon, he continued to sit on a *charpoy* with Ningappa at the latter's house. It was from this place that he saw Shivagangava being taken naked to the Ramlinga temple and subsequently being taken and burnt in the stack of Nagappa Kumbhar. Even after seeing this incident he continued to sit there on the *charpoy* as, to use his own words, he "wanted to see the second tragedy all through"; and while he was sitting there he also saw from the vantage point Basangouda being taken and also being burnt alive in the stack of Nagappa Kumbhar. All this story about Chanbasangouda sitting at one spot and seeing the whole incident through appears unnatural. Moreover, the story given by him in Court conflicts very materially with what he has stated before the Police, for instance, he has stated in Court that accused Nos. 10 and 6 went to set fire to Nagappa Kumbhar's stack, a point which he has not mentioned either in his statement to the Police or in his statement under Section 164. In Court he has also given details as to how accused Nos. 10 and 15 remained behind after Shivagangava was burnt, how accused Nos. 12 and 25 came to fetch iron bar and how with the assistance of accused No. 15 the iron bar, article No. 4, was taken by accused Nos. 12, 15 and 25. But all these incidents were never alluded to by him either in his statement to the Police or in his statement under Section 164. And lastly, he has given various details as to how Basangouda was taken to the stack of Nagappa Kumbhar, in what condition he was and how he was thrown on the burning stack. None of these details have been given by him in his statement to the Police. Further he has mentioned in Court the names of accused Nos. 6 and 15 whose complicity in the events of that afternoon was never referred to by him in his statement to the Police. Under these circumstances, it appears to me very unsafe to rely on the evidence of Chanbasangouda.

Then there is the evidence of Bhimappa whose evidence is, in my opinion, on the whole, reliable. His story mainly is that after he saw the conflict among the men assembled in the two backyads and the beating of Ningangouda and Bashetti he went to accused No. 9 to request him to stop all these goings-on. Accused No. 9 referred him to accused No. 10 who was at the smithy. After accused No. 10 had turned down his request he saw the disgrace of Shivagangava. Thereafter he went to his house and saw all the accused come to Basangouda's house and break it open. He and Nilkanthgouda then went to seek intervention of accused No. 10 again and accused No. 10 then promised to intervene if Nilkanthgouda stood surety that Basangouda would take no steps regarding Shivagangava's burning. He saw Basangouda being attacked and then being lifted and carried away from his house. He followed Basangouda up to some distance, but accused Nos. 19 and 20 sent him back. It was argued that Bhimappa was a coolie and was indebted to accused No. 10 and would, therefore, not be a person who would want to seek intervention of accused No. 10 and act the role of a peace-maker. Although he stated in Court that all the accused were in the backyard of Dod-Bharamgouda, before the Police he mentioned only 19 accused. It was further argued that he had stated in Court that when he saw Bashetti being beaten, he did not see Nilava and others and that he was alone and thus his evidence is in conflict with Nilava's. In describing the assault on Ningangouda and Bashetti he named several accused but included among them accused No. 17 whose name was not mentioned before the Police. I do not consider that any of these arguments are sufficient to justify us in rejecting Bhimappa's evidence. It is undoubtedly true that he was a coolie; but the incidents took place at about mid-day when many of the field labourers might have come back to their houses at about meal time. Seeing the ghastly incidents that were taking place, it is not unlikely that he may have thought of seeking the intervention of accused No. 10 who, it appears, was a leader of the village and whose influence was likely to bring about peace. Even the fact that he had failed in his first attempt in persuading accused No. 10 to intervene would not necessarily discourage him from making a further attempt when Basangouda's house was being raided. It is true that in his statement before the Police, he mentioned only 19 persons by names. But he has also added that there were others in addition to those 19 accused whose names he has given. There is no conflict between the evidence given by Bhimappa and that given by Nilava, because, it appears that Bhimappa came on the spot where Bashetti was attacked much before Nilava and Sangamma came. It is for this reason that he may be saying that when Bashetti was beaten, there was no one else execept himself. It is true that this witness did not mention before the Police the name of accused No. 17 among the persons whom he had mentioned in Court as persons concerned in the attack on Ningangouda and Bashetti. But as I have pointed out in an earlier part of the judgment the omission of one or two names by witnesses in their statements to the

Police would not necessarily indicate that the witnesses were telling an untruth. So many different persons were concerned in so many different incidents of that afternoon that such mistakes are not improbable. When mistakes do occur with respect to the individual accused, that accused must, of course, be given the benefit of doubt necessarily arising from such a discrepancy. But it would not make the whole evidence of the witness unreliabe. I am, therefore, of opinion that the evidence of Bhimappa should be accepted as reliable.

Then I come to the evidence of Channaya. According to this witness, he was on his way *via* Balganur Station to Gadag, accompanied by his father-in-law, Kalkangouda. When he came near the Kadadi village his father-in-law went to ease himself and the witness proceeded up to the *math* of Nilamma from where he heard shouts. He, therefore, proceeded to the spot and found persons whom he identified as accused Nos. 7 and 8 holding a naked woman by the head, accused Nos. 31, 18, 36 and 42 holding her by the legs and accused Nos. 20, 6, 26 and 19 holding her by the arms. She was flung into the burning stack and some 25 people brought fodder from the adjoining Kannad School. Thereafter he felt thirsty and went back to Mudappa's shop where he met his father-in-law. They then had tea and after a short while proceeded to the Balganur Station from where Channaya left for Gadag by the 6-30 p.m. train. There have been no contradictions pointed out between the evidence given by the witness in Court and the statement given by him before the Police on the 26th of March 1942 or in his statement under Section 164 given on the 27th of March 1942. But his evidence has been characterized as generally improbable because, it is argued that he had no business to go even up to the *math* of Nilamma. It was further pointed out that the witness took 13 minutes in the Court to identifiy the 10 accused named by him. It was argued that there was a direct route from Garwad to Balganur Station and that, therefore, Channaya and his father-in-law had no business to go *via* Kadadi. I do not think that there is much substance in any part of this criticism. Although it appears from the evidence of Kalkangouda that there was a shorter route from Garwad to Balagnur Station, there is the evidence of Channaya and Kalkangouda that it was the practice of Kalkangouda to see his son-in-law off at Balagnur Station, and for that purpose, they went *via* Kadadi where they used to take tea at the shop of Mudkappa. It was argued that even so, there was no necessity for them to start so early. But, as the evidence shows, they started one hour after the mid-day meal and came to Kadadi at about 10-30 p.m. It is not unusual for villagers to treat such an occasion as a kind of outing, to have tea on the way at a tea-shop, where they could bring themselves up-to-date in the village gossip and then take a leisurely walk to the station and be there in good time before the arrival of the train. It was argued that Channaya had no business to go even as far as Nilamma's *math*. But in any case as the map shows they had to go as far as Kalmeshwar temple from where a foot-path branches off to Mudkappa's shop. From that temple Nilamma's *math* is not very far off, and it is not improbable that Channaya may have gone as far as the *math*. It was lastly argued that Channaya's only acquaintance was Mudkappa, and it would, therefore, not be possible for him to identify the 10 persons who held Shivagangava before she was flung into the burning stack. In fact, the witness could not name any of the 10 persons in his statement to the Police, and it was in the various identification parades which were held at six different places in the month of August that he picked out the persons among whom he subsequently identified in Court the ten persons who flung the naked woman into the burning stack. As I have stated above there are no discrepancies in the statements made by him in Court and those made by him before the Police or under Section 164. But one or two minor contradictions have been shown in the statement of this witness in the Sessions Court as compared with that made by him in the Committing Magistrate's Court. What he and Kalkangouda stated before the Committing Magistrate was that Channaya's wife had never been sent to her husband at Gadag although both of them stated in the Sessions Court that she had gone there once or twice. As Channaya's wife is only 16 years of age, it is improbable that she ever went to her husband; but that did not prevent Channaya from going to Garwad to see his wife, and it was on these occasions that Channaya and his father-in-law Kalkangouda went to Balganur Station *via* Kadadi where they used to have tea at at the shop of Mudkappa. The two other contradictions with respect to the naked woman "*lying on the ground*" and about people being getting fodder "*from the Kannad School*" are very trifling and do not affect the credibility of the witness. I am, therefore, of opinion that his evidence should be accepted although with respect to accused No. 36 it must be rejected on the ground that he never identified accused No. 36 in any of the identification parades that were held in the month of August.

In support of the evidence of Channaya there is the evidence of Kalkangouda and Mudkappa. I have already referred in passing to the evidence of Kalkangouda who corrborates Channaya by saying that when his son-in-law came to Mudkappa's shop he told him what he had seen, viz., a naked woman being burnt to death in a burning stack. Then there is the evidence of Mudkappa who corroborates the evidence of several witnesses such as Chanbasangouda, Narayan Pujar, Nilkanthgouda, Kalkangouda, Channaya and Nilava as regards their movements. The main criticism against the evidence of this witness consists in the discrepancy which has been pointed out in the statement of this witness in Court and the statement made by him before the Police as regards what Channaya told him. There is some conflict as to how the statement of this witness in Kannad should be read. According to the defence version Channaya told Kalkangouda and Mudkappa about Basangouda's house being broken open and his being burnt in the burning stack. For this interpretation the verb should be "*helida*", (he said), while the actual word used is "*helide*" (I said). This version would obviously make Channaya's evidence untenable because Channaya never saw anything about Basangouda's house being broken open or about Basangouda being burnt. According to the prosecution, however, the word "*helide*" indicates that it was Mudkappa himself who told Channaya and Kalkangouda about the Basangouda incident. But in this construction there is a difficulty that the Kanarese version is "*nanna munde*", i.e., "in my presence", and it would be difficult to read the sentence as meaning "I told them in my presence". In order to make this construction possible one has got to omit the first syllable "*na*" from "*nanna munde*" in which case the sentence would read "I told in the presence of Channaya and Kalkangouda". There is, therefore, difficulty in accepting either of the two versions although the official translation supports the defence construction. But in any case, it would not

be possible to contradict Channaya as to the version he gave to Mudkappa by referring to Mudkappa's own statement before the Police. Mudkappa's statement before the Police is no evidence except in so far as it can be used for contradicting Mudkappa's evidence in Court. But it cannot be used for proving that Channaya's story in Court is false. In my opinion, Mudkappa's evidence is reliable, especially as it fits in, to a remarkable degree, with the evidence given by so many other witnesses.

Then there is the witness Pampanna whose evidence must be regarded as unsatisfactory. He deposed, in the first instance, to having seen the quarrel in the two backyards and also speaks about having seen Shivagangava taken naked to the burning stack and burnt alive. He mentions the names of none of the accused in this connection. He says that after seeing this incident he again heard shouts an hour and a half later and then he came to the backyard and saw Basangouda being taken to the burning stack, held by accused Nos. 12, 13 and 15 and another by his arms, by accused Nos. 50, 38 and 39 and another person by his legs and by accused Nos. 29 and 37 by his head. After he was thrown on the stack and left burning, most of the accused left leaving accused Nos. 11 and 50 behind to add fodder. The main criticism of the evidence of this witness is that his evidence appears to have been purchased. After this witness had given evidence in examination-in-chief and was under cross-examination, he went out of the Court on the pretext of easing himself and then absconded. He was arrested six weeks later in the native state of Ramdurg and was brought back to complete his evidence. He then stated that he had absconded because accused No. 10 had looked menacingly at him while he was giving evidence in examination-in-chief. This explanation may or may not be true, but the most serious obstacle in the way of accepting the evidence of Pampanna is that Nilkanthgouda has admitted that on the day on which Pampanna absconded, he (Nilkanthgouda) sent a wire to Ishwargouda at Gadag not to pay any money to the witness as he had not given complete evidence. This indicates Nilkanthgouda's clear interest in the prosecution and suggests the conclusion that Pampanna's evidence was being bought. Nilkanthgouda has given an explanation which is hardly satisfactory, viz., that Ishwargouda himself owed some money to Pampanna, the payment of which he intended to stop. But there is nothing to show that Nilkanthgouda knew that anybody was owing money to Pampanna, and there is no reason as to why Pampanna's going away without giving full evidence should have compelled Nilkanthgouda to send a telegram to Ishwargouda at Gadag. In any case, it appears to be unsafe to place any reliance on the evidence of this witness especially when it is noticed that he has not mentioned either in his statement before the Police or in his statement under Section 164 several of the details which he has deposed to in the Court. For instance, he did not state that he heard that Shivagangava was to be burnt or that she was beaten and pushed, or that she was covered with blood. Although he has given 10 names of the persons who were concerned in burning Basangouda, he did not mention any names in his statement under Section 164, and of those mentioned by him in Court accused No. 13 was not mentioned even before the Police. But still more vital criticism against his evidence is that he stated in his statement under Section 164 that accused No. 50 came after all the accused had left. This clearly suggests that accused No. 50 was not concerned in the burning of Basangouda. Yet in Court he has stated that accused No. 50 was among those who were left behind to add fodder. In view of this state of evidence, I am of opinion that it would not be safe to rely on the evidence of Pampanna.

Lastly there is the evidence of Gangappa, the goldsmith, whose evidence also in my opinion is useless. He was examined to prove the identity of article No. 22 having been made by him for Shivagangava which article was subsequently attached from the house of accused No. 48. Accused No. 48 himself claims it as an article belonging to his mother. But when cross-examined, the witness had to admit that he had made 40 to 50 such articles and that if they were all kept together, he would not be in a position to say which article was made by him and for whom. One cannot, therefore, say whether article No. 22 which was found in the house of accused No. 48 belonged to Shivagangava. These are all the witnesses who deposed to the incidents connected with the disgrace of Shivagangava, her abduction and her subsequent burning.

Now, taking the evidence of the witnesses whom we consider as reliable we find that with respect to Shivagangava's disgrace, Bharmava mentions accused Nos. 13, 15, 16, 17, 22, 38, 42 and 48, particularising that accused No. 17 removed the waist-band and accused No. 48 removed her *sari*. As there is some doubt about accused Nos. 17 and 48, it would not be safe to act on her evidence with respect to them. Yamanya does not mention any of the accused though on his evidence it is clear that Shivagangava was, in fact, disgraced. He heard accused No. 48 go and tell the women in the Gojnur's house to retire as Shivagangava was being brought there. But this cannot implicate accused No. 48 in what took place. Bhimappa only refers to his approaching accused No. 9 who directed him to go to accused No. 10. But after describing how Shivagangava was dragged and disrobed, he only mentions accused Nos. 39 and 21 as persons who held her by the arms and adds that he saw accused No. 48 take a *sari* in his hand and go to the Ramlinga temple. Mudkappa merely heard accused No. 10 say that Shivagangava was naked and any one could go and see her disgrace. Although from the evidence it must be held that Shivagangava was disgraced, there is no evidence of more than one witness showing the complicity of any of the accused in connection with the disgrace of Shivagangava. Under these circumstances, it is not possible to convict any of the accused either under Section 354 or under Sections 323, 394 and 395 of the Indian Penal Code in connection with this incident.

Similarly, in connection with Shivagangava being carried to Nagappa Kumbhar's stack and there being burnt, there is the evidence of Yamanya and Channaya, the latter being corroborated by Kalkangouda and Mudkappa to show that Shivagangava was carried to the burning stack and there burnt. But there is only the evidence of Channaya to implicate any individual accused in connection with the actual burning. There is also the evidence of Nilava who has stated that Ira told him about Shivagangava being burnt. But as regards the actual persons who burnt Shivagangava in Nagappa Kumbhar's stack, there is no evidence except that of Channaya to implicate any individual accused. Channaya himself was a resident of another village and was merely passing by the village of Kadadi. He identified 10 accused about five months after the incident, and in the absence of corroboration it would not be safe to act upon his evidence. I, therefore, agree that it is not possible to convict any of the accused under Section 302 in connection with Shivagangava's death.

The next main incident is about the breaking open of the house of Basangouda, Basangouda being beaten and then forcibly taken away to the stack of Nagappa Kumbhar. The prosecution story on this point is that after Shivagangava was burnt, the crowd proceeded to the house of Basangouda and on their way looked in at the house of Kashappa and also at the house of Ramangouda. In looking into the house of Ramangouda they were presumably in search of Bashetti for according to Bashetti, he heard accused No. 9 say : " Don't waste time, let us go to Basya". Nilava who was also with Bashetti saw accused No. 27 peeping in and saying : "Nilava is there but not Bashetti." But it is not necessary to consider any part of this incident any further, as there is no specific charge against any of the accused with respect to this small incident. On going to the house of Basangouda which is almost next door to the house of Ramangouda and Ningangouda they found that the front door was closed. They attempted to open the front door. Accused No. 14 was sent out to fetch an iron bar and in the meantime the people who collected there abused Basangouda and asked him to come out. After the iron bar was brought, a larger part of the crowd went to the backdoor seeing that the front door would not give way. The backdoor was of one shutter consisting of three planks held together by iron nails and also three cross bars. In order to prevent the door being opened, there was a cross bar behind it. The crowd forced open the door. The cross bars came out and the three planks of the door fell inside the kitchen. In the meantime Basangouda went to the front room and locked the middle door from inside. In the kitchen there were Bharamgouda, the son of Basangouda and also Amarappa. These two saw various people set fire to the stack of cotton and then force open also the middle door. In the meantime accused No. 10 who had been brought on the scene at the request of Bhimappa and Nilkanthgouda asked Basangouda to come out. When he came out, he was set upon by several people and severely beaten. His head began to bleed and there was a patch of blood-stained earth in front of the *katta* of Basangouda's house. Basangouda fell unconscious ; but he soon revived and was forcibly taken away by some of the accused. In criticism of this story for the prosecution it was argued that there was no special reason why the Gojnurs or people of their party should want to attack Basangouda, and even the story of the breaking open of the door was characterized as improbable, if not an impossible one. It was contended that as the cross bars were held together by three nails each it would not have been easy to remove those cross bars without the bars showing considerable marks of violence. As the hinges of the first plank were intact, it was argued that even if the other planks came away, the first plank should be in position, whereas according to the evidence of the witnesses, the three cross bars were lying in the backyard and that all the three planks were lying loose in the kitchen. It was argued that this was a clear indication that some attempt has been made to fabricate the evidence. Even if the inside bar which has been described as a latch was broken, it was suggested that so long as the hinges were intact the door should rotate and not come to pieces. With respect to the breaking open of the middle door, the agrument was that when the iron bar was inserted at the junction of the two shutters in order to force it open, a gap of one span was made according to the evidence of witness Amarappa. If this was so, it is argued that the inner shutter would automatically come away and there would be no necessity of pulling that flap of the door to such an extent as to cause the breaking of the latch which connected the door to the frame. With respect to the patch of blood-stained earth in front of the house, it was suggested that it may have been due to the injury that was received by Basangouda in the backyard of Dod-Bharamgouda. In my opinion, none of these arguments are sufficient to render the prosecution story improbable or to lead one to reject the direct evidence in the case. It is in evidence that when Bashetti and Shivagangava were prosecuted by accused Nos. 28 and 39, Basangouda took a very prominent part in arranging about the defence and himself stood surety for them when they were bailed out. It appears that in the eyes of the Gojnurs and people of their party, Basangouda was identifying himself with the interest of Shivagangava. According to the evidence of Bharamgouda, when the crowd came there they asked him : " Why are you siding with the woman ? " There is also the evidence to show that some of the accused said that Basangouda would be a source of danger and hence he should be done away with. It is, therefore, not improbable that the crowd wished to wreak vengeance on Basangouda also. As regards the breaking open of the doors, some of the cross bars do show marks of violence though not to the extent which one would expect. The violence to be expected on the door would depend upon what the state of the door was before it was attempted to be forced open. If the door was already in not too good a condition, the violence that would be required to force it open would not be very great. After the cross bars fell, some violence must have been used because the latch on the inside was broken, and considerable force must have been applied from outside in order to break it. It is true, as the learned Counsel for the accused contended, that if the hinges are intact, the door would rotate, and at least the first plank of it would not come out of the socket. But it is by no means clear that in order to force open the door an attempt was not made to lift the door flap out of its sockets. The lower hinge is an iron one and is not very long. If, therefore, simultaneous attempts were made both to lift the door out of its hinges and to force it open, the planks may have come away after the cross bars were removed and the hinges of the door may have come out of the sockets, with the result that all the planks were found inside the kitchen. As regards the middle door, the argument with regard to the flap of the door opening to the extent of a span is not altogether convincing. The chain of the door which was fixed to the hasp on the other side is by no means a long one and must have held the door in position without allowing much play between the two flaps of the door. This is clear from the fact that according to the evidence when the iron bar which was inserted between the two flaps was taken out, the two flaps came together again. The gap was only created so long as the iron bar inserted between them remained in that position and so long as the bar remained there, the inner flap could not possibly come away even though some gap was created between the two flaps. Moreover, the distance of one span which was given by the witness Amarappa may be a distance not breadthwise but lengthwise, i.e., only at the place where the rod was inserted. This would not allow the inner flap to come out ; and when this gap was created lengthwise to the extent of a span by the insertion of the rod, the crowd might have made use of it in putting their hands in and pulling the flaps back into the kitchen. I do not think that there is anything inherently improbable in the story given by the prosecution. The theory of the defence is that there was no house-breaking as such but in order to create an appearance of house-breaking, the door appears

to have been deliberately dismantled, the cross bars placed outside in the backyard and the three planks of the back door carefully kept in the kitchen. According to Bashetti, the door was broken open at about 2 or 3 p.m. Even in order to create an appearance of house-breaking, the door would have to be broken open, and it is hardly likely that in fabricating evidence they would be so careful as to remove the cross bars with a pointed chisel so as to leave no marks of violence. The middle door does show a mark at the place where the iron rod was inserted. If the persons intent on getting up a false case were out to fabricate evidence it would have been sufficient for them to fake the breaking open of the back door and need not have gone to the length of creating an appearance of breaking open the middle door. Similarly, there is no point in creating the appearance of setting fire to cotton which was in fact found in half-burnt condition when the *panchnama* was made the next morning unless the persons concerned wanted to create evidence of another charge of arson against the accused. And if the defence arguments were to be accepted all this was carefully thought out and brought into existence between 5 o'clock in the afternoon and 2 o'clock in the morning; for when the sub-Inspector came to the house of Basangouda at 2 a.m. he found that the door had been forced open. This appears to be cleary impossible. Similarly, it is difficult to accept the defence argument that the patch of blood in front of the house of Basangouda was caused as a result of the head injury which Basangouda had received in the backyard of Dod-Bharamgouda. There is no reason why that injury on the head received in the backyard of Dod-Bharamgouda should cause a big patch of blood-stained earth in front of Basangouda's house. This would not be so unless he sat in front of his *katta* with his forehead touching that bit of ground so as to allow the blood to soak into the earth. On the other hand, the patch of blood can clearly be explained on the prosecution story that he was severely beaten on the ground in front of his *katta* and remained there bleeding for some time. I am, therefore, of opinion, that the general considerations which have been urged do not make the prosecution story improbable.

The direct evidence on this point consists of the evidence of Bashetti, Ningangouda, Irappa, Chanbasangouda, Nilava and Bhimappa whose evidence I have already considered in connection with the two earlier incidents. I have already stated there that the evidence of Chanbasangouda and Irappa is not believable. There then remains the evidence of Nilkanthgouda, Bharamagouda, Parvateva and Amarappa, who also depose to this part of the prosecution case. In my opinion, the evidence of Nilkanthgouda cannot be accepted. He is a dismissed Police Patil who was removed from service after an inquiry in the year 1935. According to the Mamlatdar, he was unscrupulous and a consummate liar and absolutely unreliable. The District Deputy Collector found him to be quite unfit to be entrusted with his duties on account of gross and habitual neglect of duty. The defence alleged that he is at the bottom of this prosecution case and the fact that he admits having sent a telegram to Ishwargouda when Pampanna ran away lends some support to this contention. Nine of the accused gave evidence against him in the inquiry which was held against him, and it is somewhat significant that he is a person who has involved the largest number of accused. For these reasons it appears to me not altogeher safe to rely on his evidence.

Bharamgouda is the son of the deceased Basangouda and, in my opinion, a reliable witness. He was undoubtedly the first witness to be examined when the Police arrived on the scene that night He deposes as to the breaking open of the backdoor by certain of the accused, but as his recognition of the accused is based on merely what he heard, it would not be safe to act on his evidence in so far as he deposes to the identification of the accused by their voices. The evidence is that after the back door was broken open, some persons entered the kitchen and then forced open the middle door. As he was then in the kitchen, he could easily identify the people who did so. After the front door was opened and Basangouda came out, he saw some of the accused who were then standing by his father. After accused No. 11 had said that Basangouda may be taken away he saw some of the accused carry him away. He followed his father up to a certain distance, but then he was sent back being beaten by accused No. 27. Thereafter he was uneasy about the fate of his father; so he again went by a different way to the place on the road in front of Adiveappa Saraf's house and from there saw his father being burnt. As he was at some distance, he could not see the things in very great detail and could not name the accused who were actually there at that time. The evidence given by this witness appears to be consistent as very few discrepancies have been pointed out between his evidence in the Court and the statement given by him before the Police. If his father had merely disappeared from the village, a son is hardly likely to give such a story as to his fate. He came thereafter and told Parvateva and Amarappa that his father had been burnt. On this point he is supported by the evidence of Parvateva and Amarappa, although these witnesses did not think this matter to be of sufficient importance to justify their mentioning it in their statements before the Police. On the whole, I am of opinion that Bharamgouda's evidence is acceptable.

Then there is the evidence of Parvateva and Amarappa. Very little was urged by Mr. Desai against the acceptance of Parvateva's evidence. The learned Judge appears to have rejected her evidence on the ground that it was the harvest season and, therefore, she should normally be in the field. But as these incidents took place soon after the mid-day meal, it is not unlikely that Parvateva may have remained in the house. The learned Judge thinks that she should have gone with Virupaxagouda to inform the Police; but as she was frightened, one could hardly expect her to do so. Her evidence is that the accused came and tried to open, first the front door and then the back door, and when Basangouda came out, some of the accused assaulted him and took him away. She and Bharamgouda followed but accused No. 27 hit Bharamgouda and asked him to go away. She herself followed Basangouda up to Adiveppa Saraf's house from where she was also sent back. Amarappa, along with Bharamgouda, actually saw the breaking open of the back door and the middle door and some people standing near Basangouda after he had been beaten. At the suggestion of accused No. 11 Basangouda was carried away by six of the accused. The only contradiction that has been brought out between his evidence in the Court and in his statement before the Police is that although he mentioned accused Nos. 14 and 17 in the Court as persons who were among those who carried Basangouda away, they were not mentioned in his statement to the Police. This is a trifling discrepancy, and although the benefit of this discrepancy must go so far as accused Nos. 17 and 14 are concerned, it is not sufficient to justify us in rejecting his evidence altogether. In my opinion, therefore, the evidence of both Parvateva and Amarappa is on the whole reliable.

Taking, therefore, the evidence of the witnesses whom we consider reliable in connection with the various incidents in this connection the position is this : Bashetti and Nilava who heard about this incident when they were shut up in the house of Ramangouda prove that the incident did take place, and naturally enough, they did not mentioned the names of any particular accused. Ningangouda saw this incident through the chink in the door but so far as his identification of accused Nos. 9, 10, 12, 13, 17, 25, 26, 27, 29, 48 and 47 is based on the voices which he heard, it would not be safe to rely upon it. Moreover, he mentioned the names of these accused not in his examination-in-chief but in cross-examination. His other evidence is that accused Nos. 14 and 39 abused, and accused Nos. 35, 38 and 48 said that they would go to the back door. Accused Nos. 14 and 39 were identified by voices. His evidence, therefore, on that point may be discarded. Bhimappa deposes to the presence of accused Nos. 2, 8, 13, 18, 19, 20, 22, 24, 43 and 47 as having forced open the back door. And there is nothing in the cross-examination of this witness to lead one to doubt his evidence with respect to any of these accused. With regard to Bharamgouda, as I have already said, it would not be safe to act upon his evidence that accused Nos. 10, 14, 15, 16, 19, 25, 26, 36, 38, 39, 47, 48 and 49 forced open the back door because at that time he was in the room, and it is doubtful whether he could identify so many people by their voices. But when the back door was forced open, he actually saw accused Nos. 2, 8, 14, 16, 18, 19, 21, 24, 25, 40 and 47 enter the kitchen. Out of these, the names of accused Nos. 24, 25, 40 and 47 were not mentioned before the Committing Magistrate, and, therefore, to that extent his evidence cannot be acted upon. Parvateva stated in her cross-examination that accused Nos. 14, 15, 39 and 40 attempted to break open the front door. And lastly, there is the evidence of Amarappa about the presence of accused Nos. 11 and 15. Accused No. 11 is said to have told accused No. 15 to bring chillies. But as this was not mentioned before the Police, there is some doubt about the correctness of this part of the witness's story. But he does say that he saw accused Nos. 2, 8, 21, 22, 25, 26, 27, 32, 46 and 47 go to the back door and accused No. 27 insert the iron bar to force open the middle door. There is, therefore, considerable evidence to hold that the house was broken open and the presence of accused Nos. 2, 8, 14, 18, 19, 21, 22 and 47 is deposed to by at least two of these witnesses. They must all, therefore, be held guilty under section 454 read with section 149 as there is no direct evidence as to which of the accused actually forced the door open. The intention obviously was to attack Basangouda for reasons given by my learned Brother. As regards the charges under sections 435 and 436 in relation to the setting fire to the cotton, there is no evidence, and all the accused must, therefore, be acquitted of these charges.

As regards the beating administered to Basangouda, the four witnesses on whose evidence reliance can be placed are Bhimappa, Bharamgouda, Parvateva and Amarappa. Bhimappa mentions that accused Nos. 13, 14, 15, 16, 25 and 39 actually beat Basangouda. Bharmagouda mentions the names of accused Nos. 14, 17, 25, 39, 40 and 48 as having stood near Basangouda, and of the presence of accused Nos. 9, 10 and 12 to whom the witness prayed that his father may not be further beaten. But out of these, the names of accused Nos. 17 and 48 were not mentioned before the Police, and he names of accused Nos. 14, 17, 25, 39 and 48 were not mentioned before the Committing Magistrate. The evidence of this witness, therefore, can be acted upon only with respect to accused No. 9, 10, 12 and 40. Paravateva mentions that accused No. 10 came on the scene and that thereafter accused Nos. 15, 16 and 39 hit Bharamgouda on the head, accused Nos. 13 and 14 hit him with a stick and accused No. 25 hit him with an iron bar and that she then requested accused Nos. 9, 10 and 12 not to beat Bharamgouda. But all these incidents were not mentioned by her, nor the names given in her statement before the Police and her evidence, therefore, with respect to any of these accused cannot be safely acted upon. Amarappa has not mentioned the names of any of the accused in connection with the beating of Bharamgavada. The result, therefore, is that there is not any evidence of more than one witness to implicate any of the accused with respect to the beating which was administered to Basangouda. I, therefore, think that it would not be safe to convict any of the accused of causing hurt to Basangouda.

As regards Basangouda being forcibly taken away, the reliable witnesses are Ningangouda, Nilava, Bhimappa, Bharamgouda, Parvateva and Amarappa. According to Ningangouda, accused Nos. 10, 11 and 28 said that Basangouda should be taken away dead or alive, accused No. 28 adding that Gojnurs would not be safe so long as he (i.e., Basangouda) was alive. Nilava mentions accused No. 10 as saying that it would be harmful to leave Basangouda. Bhimappa says that accused Nos. 10, 11, 12 and 28 instigated others to lift Basangouda, and as a result, accused Nos. 14, 25 and 39 carried him away. According to his evidence, accused Nos. 19 and 20 were also present there, and it was they who sent him and Nilkanthgouda back from Shankargouda's house. According to Bharmagouda, accused No. 11 said " What are you listening ? Lift him " ; and thereupon accused Nos. 14, 15, 25, 39, 40 and 48 carried him away and when he attempted to follow them, accused No. 27 struck him and sent him back. Parvateva says that accused No. 11 said that Basangouda should be taken away and that thereupon accused Nos. 14. 15, 39 and 40 lifted Basangouda and carried him away. When she followed them, accused No. 28 hit Bharmagouda and she herself returned from Adiveppa Saraf's house. According to Amarappa, accused No. 11 said : " Why are you listening ? Lift him " ; and thereupon accused Nos. 14 and 40 lifted Basangouda by his legs, accused Nos. 17 and 25 by his hands, accused No. 15 by his head and accused No. 39 by his waist. There is some doubt about the presence of accused Nos. 14 and 17 as their names were not mentioned by this witness before the Police. The result of this analysis of this evidence is that there is considerable evidence that accused Nos. 10 and 11 incited others to abduct Basangouda and, therefore, in my opinion, guilty under section 364 read with section 114. The names of accused Nos. 14, 15, 25, 39 and 40 are mentioned by two or more witnesses as having forcibly taken away Basangouda and they are, therefore, guilty under section 364 of the Indian Penal Code. Accused No. 27 is mentioned by Parvateva and Bharmagouda as being present and he is, therefore, guilty under section 364 read with section 149. In my opinion, there can be no doubt that Basangouda was taken away with the intention of murdering him as is obvious from the exhortations made by accused Nos. 10 and 11 . We do not think, and the learned Advocate General agrees that even though we hold that Basangouda was subsequently murdered, these accused can be convicted under section 302 read with section 109. Section 364 applies even if murder for which a person is abducted

has or has not taken place. But as pointed out by Mr. Chundrigar, even if abduction for murder is an abetment of murder, it is an abetment for which special provision is made, and consequently section 109 would not apply.

The last part of the prosecution consists of Basangouda being burnt alive and the crowd thereafter proceeding to the house of Shivagangava in search of Bashetti and there committing a dacoity by forcibly taking away the sweetmeats from that house. The prosecution story in this part of the case is that after he was forcibly taken to the stack of Nagappa Kumbhar, Basangouda was thrown on the burning stack. When he rolled down, fodder and fuel were obtained from the adjoining localities and heaped upon him, and after he was dead and burned, the crowd proceeded in the direction of Shivagangava's house. There they raided the house and took away sweetmeats. I have already discussed in the earlier part of the judgment the improbabilities that have been suggested in connection with the burning of the two bodies of Shivagangava and Basangouda, and I have come to the conslusion that there is nothing inherently improbable in the story that the two burnings took place. The direct evidence on this point consists of the evidence of the witnesses, viz., Chanbasangouda, Dyama, Pampanna, Bharmagouda, Virupaxagouda and Mahadevappa. I have already dealt, in another connection, with the evidence of Chanbasangouda and Pampanna and held that their evidence is not reliable. I have considered the evidence of Bharmagouda as reliable. There then remains only to consider the evidence of Dyama, Virupaxagouda and Mahadevappa. Dyama's evidence is that while he was returning after grazing his goat and a calf, he came to the stack of Hulgur Sakrappa where he saw Basangouda brought to the stack with a rope tied round his knees, and in spite of Basangouda's entreaties, Basangouda was thrown into the burning stack. When he fell down from the stack, he was hit on his shoulder by accused No. 12 with a stick and pushed into the fire. Fodder was obtained from the school compound and fuel from the backyard of accused No. 12. Accused Nos. 4, 6, 8 and 47 were adding fuel to another fire and accused Nos. 10 and 50 said that some additional fuel should be brought. Accused Nos. 4 and 25 threateningly asked him why he was there. He, therefore, left the place and while returning saw Chanbasangouda near the house of Ningappa Gojnur. He told Chanbasangouda about Basangouda being burnt and Chanbasangouda replied that Shivagangava had also been burnt. It was argued by the defence that the evidence of this witness should not be believed and that it was not at all probable that this witness should have gone to Bastihalla when Hirchalla was a grazing place which was nearer to his house. It is further argued that although he had said that he had carried a he goat, in his statement before the Police he had stated that he had carried a she goat for grazing. He had also stated in Court that Basangouda was carried on shoulders which no other witness had deposed to, and it was pointed out that he was a farm servant of Basangouda. I do not think any of these arguments are sufficient to discredit his evidence. There is evidence that there was grazing available in Bastihalla to which place he was going two or three days previous to the day of the offence. Although he stated before the Police that he was taking a he-goat, in his statement under section 164 he mentioned that it was a she goat that he took. Therefore, there in no serious discrepancy on that point. I think it is immaterial whether the witness stated that Basangouda was carried on the shoulders, and the fact that he was a farm servant of Basangouda is really of no consequence because he worked for Basangouda only for one day and was also a farm servant of other persons also. There are with respect to the evidence of this witness some discrepancies about the identity of some of the acused, but that is not, in my opinion, sufficient to reject his evidence altogether, although the benefit of those discrepancies will have to be given to the particular accused concerned. The evidence of Virupaxagouda and Mahadevappa must be unhesitatingly rejected. Both of them speak of their having come near the stack of Nagappa Kumbhar when the two bodies were being burnt and having seen a certain number of the accused there. Mahadevappa also adds a touch of the dramatic when he deposes to accused No. 14 having said : " Oh Mahadeva, you had your New Year celebration some time back, you look at ours." Virupaxagouda actually deposes to accused No. 4 having told the witness that one heap was that of Shivagangava and the other that of Basangouda, a statement which he never made either before the Police or the Committing Magistrate. But the most serious objection to the evidence of Virupaxagouda is that he has mentioned the names of accused Nos. 10, 15, 4 and 6 and one Ningappa Gojnur as being present there and keeping the fire alive. Ningappa Gojnur has not been

shown to be concerned in this affair, and it appears that because he had a grudge against him as a result of a decree which Ningappa obtained, he has not hesitated to involve him in this offence. Moreover, in the six identification parades that were held in the month of August, he identified 12 accused and another person none of whom he had mentioned in his evidence in Court. On the other hand, the persons whom he identified in Court as being present near the two heaps of burning fodder were never identified by him at any of the identification parades. Mahadevappa is a thoroughly unreliable witness, looking to his past history. He was twice convicted of theft and house-breaking. There were once chapter case proceedings against him and he is under the Police surveillance. He has lost his *inam* land, and it would, therefore, be very risky to depend upon the evidence of such a witness.

The result, therefore, is : With respect to the burninng of Basangouda, the evidence of Chanbasangouda, Pampanna, Virupaxagouda and Mahadevappa is unreliable, and Bharmagouda does not mention the names of any of the accused. We are, therefore, left only with the evidence of Dyama as regards the persons who actually were responsible for buring Basangouda. Although the *factum* of the burning has been proved beyond any reasonable doubt on the evidence of several witnesses, particularly Dyama and Bharmagouda, the finding of the two burning heaps and the discovery of the human bones, there is no reliable evidence, except that of Dyama to show the complicity of any of the accused in the actual burning ; and it would be, in my opinion, quite unsafe to convict the accused on a charge under section 302 on the evidence of one witness alone, especially as the names of some of the accused whom he mentioned in the Court were never mentioned by him before the Police. The possibility of his having made an honest mistake cannot be altogether overlooked. It is, therefore, not possible to convict any of the accused under section 302 of the Indian Penal Code.

As regards the robbery in the house of Shivagangava and taking away of the sweetmeats, there is only the evidence of Nilava who says that accused Nos. 14, 15, 17, 38, 39, 48 and 49 entered her house forcibly and took away the sweetmeats. As there is no corroboration of her evidence on this point, it is clearly impossible to convict any of the accused with respect to this charge.

The result, therefore, is that the order of acquittal with respect to accused Nos. 1, 3, 4, 5; 6, 7, 20, 23, 24, 26, 30 ,31, 32, 33, 34, 35, 36, 37, 38, 41, 42, 43, 44, 45, 46, 50 and 51 is upheld, and the Government appeal with respect to them should be dismissed.

As regards sentences on the accused with respect to whom the appeal is allowed, I agree with the order proposed by my learned brother.

By the Court,

(Signed) T. P. GHOGALE,
Deputy Registrar.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.